University of Miami Sea Grant

(Ocean Law)

An Anonymous Draft Treaty on the Law of the Sea

DENNIS M. O'CONNOR (ed.)

Sea Grant Technical Bulletin
Number 29
March, 1975

Price: $3.00

Library of Congress Catalog Card Number: 75-6108

This publication is distributed under Grant #04 5 158 14 of the NOAA Office of Sea Grant, Department of Commerce. Anyone is authorized to produce and distribute reprints.

Information Services
Sea Grant Program
University of Miami
Post Office Box 249178
Coral Gables, Florida 33124
Telephone (305) 284-3334

PREFACE

The Third United Nations Conference on the Law of the Sea, which conducted its First Session in Caracas in 1974, and which will conduct its Second Session in Geneva March 17 to May 10, 1975, has as its goal the adoption of "a convention dealing with all matters relating to the law of the sea." Despite extensive preparatory work, the Caracas Session revealed major differences between states, and between groups of states (notably developed and developing ones), on many major issues on which little, if any, progress was made. Many delegates and observers made gloomy predictions about the possibility of successful agreement at the Geneva Session.

This project of the Ocean Law Seminar during the Spring Semester, 1975, resulted from an idea expressed by former Ambassador Donald L. McKernan, now Professor at the University of Washington, in a panel discussion at the meeting of the Law of the Sea Institute in Miami, Florida, January 6-9, 1975. Referring to the persistence of states in maintaining their declared divergent positions, Professor McKernan advanced the thought that, if someone were to prepare "an anonymous draft treaty" indicating lines of compromise which may be in the common interest, and to present this draft to states participating in the Geneva Session, perhaps this might serve as a focus for

some discussion and facilitate resolution of differences. Such a draft would, of course, not reflect the position of any particular state, but would be intended to probe for solutions in the common interests of all.

In order to make the results available by the opening of the Geneva Session, students in the Ocean Law Seminar agreed to work at "double pace," and complete their work in a seven week period. The task was to produce a draft treaty representing the common interests of states. The students divided into teams working on the subject areas of: navigation, fisheries, coastal state seabed jurisdiction, the international seabed area, marine scientific research, and marine pollution. All the proposals, working papers and reports, and many of the speeches presented to the Caracas Session were studied. Tentative solutions were developed in each subject area, and discussion within the Seminar led to revisions based upon the results in other subject areas and upon consideration of the groupings of states in the world community.

This "Anonymous Draft Treaty" contains a number of new ideas and proposals, as well as consideration of the alternatives presented at Caracas. Unfortunately, space in this publication permits inclusion in the "Discussion" section of only minor elements from the student papers submitted in support of the draft articles chosen.

Credit is due the following students who participated:

Clemens E. Ady
Andrew W. Anderson
William K. Bissell
David A. Crowley
Ivan W. Ficken
Edward B. Galante
Joel G. MacDonald
Daniel D. Mazar
C. Edward Porch
G. Patrick Settles

Six of these students are graduate lawyers, and the remaining four are third-year law students, engaged in specialized study in our Ocean and Coastal Law Program.

The most exciting conclusion of the Seminar perhaps should be mentioned here in the Preface. Despite the pessimism expressed in some quarters, participants in the Seminar have concluded that successful agreement is possible at the Geneva Session on virtually all important issues.

Sea Grant funds are being used in the printing and distribution of this document. However, it should be noted that the opinions and conclusions presented herein do not necessarily reflect the position of any individual participant in the Seminar, nor of any government, government agency or private institution.

Dennis M. O'Connor, Director
Ocean and Coastal Law Program

March 7, 1975

SUMMARY OF CONTENTS

Preface iii

Summary of Contents vi

Contents vii

Introduction 1

ANONYMOUS DRAFT TREATY ON THE LAW OF THE SEA 4

PART I - NAVIGATION AND OTHER COMMON USES 5

PART II - FISHERIES AND LIVING RESOURCE EXPLOITATION . 30

PART III - THE ECONOMIC RESOURCE ZONE: COASTAL STATE SEABED JURISDICTION 38

PART IV - THE SEABED AND OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION 40

PART V - MARINE SCIENTIFIC RESEARCH AND THE DEVELOPMENT AND TRANSFER OF TECHNOLOGY . . . 53

PART VI - PREVENTION OF POLLUTION OF MARINE ENVIRONMENT 57

Discussion 62

I - Navigation and Other Common Uses 62

II - Fisheries and Living Resource Exploitation . 85

III - The Economic Resource Zone: Coastal State Seabed Jurisdiction 93

IV - The Seabed and Ocean Floor Beyond the Limits of National Jurisdiction 97

V - Marine Scientific Research and the Development and Transfer of Technology . . 102

VI - Prevention of Pollution of the Marine Environment 111

Conclusion 124

C O N T E N T S

Preface iii

Summary of Contents vi

Contents vii

Introduction 1

ANONYMOUS DRAFT TREATY ON THE LAW OF THE SEA 4

PART I - NAVIGATION AND OTHER COMMON USES 5

Chapter A - The Territorial Sea 5

Section 1. Nature and Characteristics 5

Section 2. Delimitation 5

Section 3. Right of Innocent Passage 8

a. Rules Applicable to All Ships 8

b. Rules Applicable to Merchant Ships 12

c. Rules Applicable to Special Category Ships . 13

d. Rules Applicable to Government Ships . . . 14

Chapter B - International Straits 15

Section 1. Nature, Characteristics and Delimitation 15

Section 2. Navigation Through International Straits 15

Chapter C - Contiguous Zone 17

Chapter D - Economic Resource Zone 18

Chapter E - High Seas 18

Chapter F - Archipelagic States 27

Chapter G - International Commission on Navigation . 27

Protocol I 28

Protocol II 28

PART II - FISHERIES AND LIVING RESOURCE EXPLOITATION . 30

Chapter A - The Territorial Sea 30

Chapter B - The Economic Resource Zone 30

Chapter C - The High Seas Regulatory Authority . . . 35

Chapter D - Effect on Existing Conventions and Agreements 36

Chapter E - Settlement of Disputes 36

ANNEX A - Highly Migratory Species 37

PART III - THE ECONOMIC RESOURCE ZONE: COASTAL STATE SEABED JURISDICTION 38

Chapter A - Definition 38

Chapter B - Delimitation 38

Chapter C - Provisions on Interference, Artificial Islands and Installations, and Living Resources 38

PART IV - THE SEABED AND OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION 40

Chapter A - Principles 40

Chapter B - Machinery 42

Section 1. The Commissions 42

Section 2. The Rules and Recommended Practices Commission 43

Section 3. The Economic Planning Commission . . . 45

Section 4. Dispute Settlement 45

Chapter C - Conditions of Exploration and Exploitation 47

PART V - MARINE SCIENTIFIC RESEARCH AND THE DEVELOPMENT AND TRANSFER OF TECHNOLOGY . . . 53

Chapter A - General Principles 53

Chapter B - International and Regional Cooperation for Marine Scientific Research Including Exchange and Publication of Scientific Data 53

Chapter C - Coastal State Consent 54

Chapter D - Legal Status of Installations for Marine Environmental Research 56

Chapter E - Responsibility and Liability 56

PART VI - PREVENTION OF POLLUTION OF THE MARINE ENVIRONMENT 57

Chapter A - General Rights and Obligations 57

Chapter B - The International Pollution Control Authority 58

Chapter C - Control of Land-Based Sources of Pollution 59

Chapter D - Control of Vessel-Based Sources of Pollution 60

Discussion 62

I - Navigation and Other Common Uses 62

II - Fisheries and Living Resource Exploitation . . . 85

III - The Economic Resource Zone: Coastal State Seabed Jurisdiction 93

IV - The Seabed and Ocean Floor Beyond the Limits of National Jurisdiction 97

V - Marine Scientific Research and the Development and Transfer of Technology 102

VI - Prevention of Pollution of the Marine Environment 111

Conclusion 124

INTRODUCTION

This Anonymous Draft Treaty on the Law of the Sea is intended to present a solution to the major differences in the positions of states demonstrated at the Caracas Session of the Third United Nations Conference on the Law of the Sea. In most instances the alternative chosen for inclusion has been selected from an existing convention or from the alternatives presented at Caracas. However, a number of new alternatives have been presented and, in some cases, portions of various alternatives have been combined in this draft. As the objective is a single convention dealing with the entire law of the sea, and the text of such a convention is necessarily lengthy, space in this publication does not permit detailed presentation of alternatives, analyses of them, or of the tradeoffs and compromises made in reaching this integrated draft treaty.

A noteworthy feature of this draft treaty is that it is organized according to the major functional subjects of uses or activities in the world oceans, rather than divided primarily into territorial seas, high seas, and so on. Navigation issues are dealt with in one part, employing provisions from existing conventions or alternatives as appropriate, and are there dealt with comprehensively with rules for the various geographic and jurisdictional areas grouped under the functional heading.

Separation of navigation, fisheries, seabed, research and pollution issues appears preferable to multiple and possibly conflicting provisions in area-based parts of the treaty. Standards of "due regard," "no unjustifiable interference," and certain other provisions,offer the means of reconciling possible conflicts among these major functional activities.

Also to be noted at the outset is the organization of this draft treaty. The first four parts: navigation, fisheries, coastal state seabed jurisdiction, and the regime for the international seabed area, are arranged in that order because this reflects the present value of these uses to the world community. Navigation is by far the most value-producing use of the oceans, and fisheries second in importance. Because the international seabed area is now expected to be pushed out beyond 200 mile coastal state seabed jurisdiction, and because intensive exploitation of this international area will occur only some years in the future, the value of use of this area is less than that of the aggregate of coastal 200 mile seabed areas. The non-commercial activities of marine scientific research, and control of pollution of the marine environment are placed next in this draft.

As to the major issues before the Conference on these subjects this draft treaty resolves the alternatives: (1) in

navigation by accommodating the transit versus littoral state control issue in favor of passage, international standards, and creation of an International Commission on Navigation; (2) in fisheries by recognizing exclusive jurisdiction of the coastal state in a 200 mile wide zone, but with a corresponding duty to permit exploitation to the level of maximum sustainable yield; (3) in coastal state seabed jurisdiction by recognizing exclusive jurisdiction to the 200 mile limit, with provisions for accommodating other uses of the high seas area; (4) in the international seabed area by a proposed resolution of the divergent positions; (5) for marine scientific research by recognizing a regime of coastal state consent, rather than flag state notice, for research within the area of the economic resource zone, and effective provision for coastal state participation and the transfer of technology to it; and (6) for control of pollution of the marine environment by presentation of provisions which would substantially develop international law on the subject, while at the same time recognizing coastal state sovereignty.

AN ANONYMOUS DRAFT TREATY

ON THE LAW OF THE SEA

PREAMBLE

The States Parties to this Convention,

Desiring to codify rules of international law on all matters relating to the law of the sea,

Have agreed as follows:

PART I - NAVIGATION AND OTHER COMMON USES

Chapter A - The Territorial Sea

Section 1. Nature and Characteristics

Article I-A-1.1 The sovereignty of a coastal state extends beyond its land territory and internal waters and, in the case of archipelagic states their archipelagic waters, over an adjacent belt of sea, described hereinafter as the territorial sea.

1.2 The sovereignty of a coastal state extends to the airspace, waters, seabed, subsoil and the resources thereof within the territorial sea.

1.3 This sovereignty is exercised subject to the provisions of these articles and other rules of international law.

Article I-A-2 Each state shall have the right to establish the breadth of its territorial sea up to a maximum limit of 12 nautical miles, measured from baselines determined in accordance with Articles I-A-3 through I-A-12 of this Convention.

Section 2. Delimitation

Article I-A-3 The normal baseline for measuring the breadth of the territorial sea, except where otherwise provided in these articles, is the low water line along the coast as marked on large scale charts officially recognized by the coastal state.

Article I-A-4.1 The straight baseline method of joining appropriate points in drawing baselines from which the breadth of the territorial sea is measured may be employed in localities where the coastline is deeply indented and cut into or where there is a fringe of islands along the coast in its immediate vicinity. The drawing of straight baselines is subject to the following provisions:

(a) Baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters;

(b) Baselines must not be drawn to and from low-tide elevations unless lighthouses or similar installations which are permanently above sea level have been built on them;

(c) Baselines must not be applied by a state in such a manner as to cut off from the high seas the territorial sea of another state;

(d) Baselines must be clearly indicated by the coastal state on charts to which due publicity must be given.

4.2 Where the straight baseline method is applicable under the provisions of paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

Article I-A-5.1 Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the state.

5.2 Where the establishment of a straight baseline in accordance with Article I-A-4 has the effect of enclosing as internal waters waters which previously had been part of the territorial sea or of the high seas, a right of innocent passage or straits navigation as provided in Articles I-A-13 and I-B-3 shall exist in these waters.

Article I-A-6.1 This article relates only to bays, the coasts of which belong to a single state.

6.2 For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, the area of a semicircle whose diameter is a line drawn across the mouth of that indentation.

6.3 For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semicircle shall be drawn as a line as long as the sum total lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.

6.4 If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four nautical miles, a closing line may be drawn between the two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

6.5 Where the distance between the low-water marks of the natural entrance points of a bay exceeds twenty-four nautical miles, a straight baseline of twenty-four miles may be drawn within the bay in such a manner as to enclose the maximum

area of water that is possible with a line of that length.

6.6 The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in Article 4 is applied.

Article I-A-7 For the purpose of delimiting the territorial sea, the outermost permanent harbor works, which form an integral part of the harbor system and which are above water at high tide, shall be regarded as forming part of the coast.

Article I-A-8 Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are treated as the territorial sea. The coastal state must clearly demarcate such roadsteads and indicate them on charts together with their boundaries to which due publicity must be given.

Article I-A-9.1 An island is a naturally-formed area of land which is surrounded by water and which is above water at high tide. The territorial sea of an island is measured subject to the provisions of these articles.

9.2 In the case of atolls or of islands having fringing reefs, the baselines for measuring the breadth of the territorial sea may be the seaward edge of the reef, as shown on official charts.

Article I-A-10.1 A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding twelve nautical miles from the coastline of the mainland or an island, the low-water line of that low-tide elevation may be used as part of the baseline for measuring the breadth of the territorial sea.

10.2 Where a low-tide elevation is wholly situated at a distance exceeding twelve nautical miles from the coastline of the mainland of an island, it has no territorial sea of its own.

Article I-A-11.1 Where the coasts of two or more states are opposite or adjacent to one another, the delimitation of the boundary lines of the respective territorial seas shall be determined by agreement among the coastal states in accordance with equitable principles.

11.2 In the course of negotiations, the states

may apply any one or a combination of delimitation methods appropriate for arriving at an equitable agreement, taking into account special circumstances. The states shall make use of the methods envisaged in Article 33 of the United Nations Charter or other peaceful means and methods open to them in order to resolve differences which may arise in the course of negotiations.

11.3 No state subject to the provisions of this Article, failing agreement to the contrary, is entitled to extend its territorial sea beyond the median line, every point of which is equidistant from the nearest point on the baselines from which the breadth of the territorial seas of opposite or adjacent states are measured.

11.4 In the event that no agreement is reached on the delimitation of the boundary lines of respective territorial seas within one year after negotiations are undertaken, any of the parties involved may submit the matter for arbitration as set out in Protocol I to this Convention.

11.5 Upon delimitation of the boundary lines of the territorial seas of two or more states opposite or adjacent to each other, their respective lines of boundary delimitation shall be marked on charts to which due publicity must be given.

Article I-A-12 If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide lines of its banks.

Section 3. Right of Innocent Passage
a. Rules Applicable to All Ships

Article I-A-13.1 Subject to the provisions of these articles, ships of all states, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea. This section shall not apply to navigation through international straits, which is governed by the provisions of Chapter B of this part of this Convention.

13.2 Innocent passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters or of proceeding to or from internal waters or any port in the territorial sea.

13.3 Innocent passage shall be continuous and expeditious; but innocent passage includes stopping and anchoring in so far as the same are incidental to ordinary navigation or are rendered necessary by <u>force majeure</u> or by distress. Passing ships shall refrain from maneuvering unnecessarily, hovering or engaging in any activity not having a direct bearing on passage.

Article I-A-14.1 Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state. Such passage shall take place in conformity with these articles and with other rules of international law.

14.2 Passage of a foreign flag ship shall not be considered prejudicial to the peace, good order or security of the coastal state unless, in the territorial sea, it engages in any of the following activities:

(a) Any act of war or threat, or use of force, in violation of the charter of the United Nations against the territorial integrity or political independence of the coastal state;

(b) Any exercises or gunfire, launching of missiles or other use of weapons of any kind;

(c) The launching, landing, or taking on board of any aircraft or military device;

(d) The embarking or disembarding of any person or cargo in violation of the laws of the coastal state;

(e) Any act of espionage affecting the defense or security of the coastal state;

(f) Deliberate acts of interference with any system of communication or any other facilities or installations of the coastal state.

14.3 The provisions of subparagraphs 2(a) to 2(f) of this Article shall not apply to any activities carried out with the prior authorization of the coastal state or as are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

Article I-A-15 Failure to comply with procedures for notification provided for in these articles shall not deter otherwise innocent passage of it character as such nor result in the denial of passage.

Article I-A-16.1 The coastal state shall have the duty, inter alia:

(a) Not to hamper innocent passage through the territorial sea;

(b) To give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea;

(c) Not to discriminate in fact or form against the ships of any particular state or against ships carrying cargoes to, from, or on behalf of any particular state;

(d) To ensure that procedures for notification provided for in these articles are performed expeditiously, so that unreasonable delays are not caused and that notification is given due publicity;

(e) Not to require unreasonably long advance notification on behalf of foreign flag ships;

(f) To compensate the owners of a foreign flag ship for loss or damage resulting from acts of the coastal state in a manner contrary to the provisions of these articles.

16.2 The coastal state shall have the right:

(a) To take the necessary steps in its territorial sea to prevent passage which is not innocent;

(b) In the case of ships proceeding to internal waters to take the necessary steps to prevent the breach of the conditions to which admission of those ships to those waters is subject;

(c) To suspend temporarily, without discrimination amongst foreign ships, the innocent passage of foreign ships through specified areas of its territorial sea if such suspension is essential for the protection of its security and takes effect after having been duly published;

(d) To require any foreign ship that does not comply with laws and regulations promulgated by the coastal state, in conformity with the provisions of Article I-A-17, and disregards any request for compliance which is made to it, to leave the territorial sea by such reasonable route as may be directed by the coastal state.

Article I-A-17.1 The coastal state may make laws and regulations, in conformity with the provisions of these articles and other rules of international law, relating to passage in the territorial sea, which laws and regulations may be in respect only of the following:

(a) The safety of navigation and the regulation of marine traffic, including the designation of sealanes, traffic separation schemes and other vessel traffic systems;

(b) The installation, utilization and protection of navigational aids, systems and facilities;

(c) The installation, utilization and protection of facilities or installations including, inter alia, those for the exploration and exploitation of marine resources or for port facilities;

(d) The preservation of the marine environment and the prevention of pollution thereof;

(e) The protection of submarine or aerial cables or pipelines;

(f) The conservation of the living resources of the sea;

(g) Research of the marine environment, including hydrographic research;

(h) The prevention of infringement of the customs, fiscal, immigration or sanitary regulations of the coastal state;

(i) The prevention of infringement of the fisheries regulations of the coastal state including, inter alia, those relating to the storage of gear.

17.2 Such laws and regulations shall not:

(a) Apply to the design, construction, manning or equipment of foreign ships or matters regulated by generally accepted international rules unless specifically authorized by such rules;

(b) Impose requirements on foreign ships which have the practical effect of denying or prejudicing the right of innocent passage in accordance with this Convention.

17.3 The coastal state shall give due publicity to all laws and regulations made by it under the provisions of this Article.

Article I-A-18.1 A coastal state may require foreign ships exercising the right of innocent passage through its territorial sea to use such sealanes, traffic separation schemes and other vessel traffic systems, including depth separation schemes, as may be designated or prescribed by the coastal state for the passage of ships.

18.2 The coastal state shall clearly demarcate all sealanes designated by it under the provision of this Article and indicate them on charts to which due publicity must be given.

18.3 In the designation of sealanes and the prescription of traffic separation schemes under the provisions of this Article, a coastal state shall take into account:

(a) The recommendations of competent international organizations;

(b) Any channels customarily used for international navigation;

(c) The special characteristics of particular channels and particular types of ships.

18.4 The coastal state may, after giving due publicity thereto, substitute other sealanes for any sealanes previously designated by it or modify other vessel traffic systems.

18.5 Foreign ships must respect applicable sealanes and vessel traffic systems and must comply with all international regulations relating to the prevention of collisions at sea.

Article I-A-19 If any ship exercising the right of innocent passage does not comply with laws and regulations concerning navigation or the notification procedures provided for by these articles, and any damage is caused to the coastal state, the coastal state shall be entitled to compensation for such damage.

Article I-A-20.1 No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.

20.2 Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

Article I-A-21 Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal state in conformity with these articles and other rules of international law.

b. Rules Applicable to Merchant Ships

Article I-A-22.1 Criminal jurisdiction of the coastal state must not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct an investigation in connection with a crime commited on board the ship during its passage, save only in the following cases:

(a) If the consequences of the crime extend to the coastal state; or

(b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or

(c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or

(d) If it is necessary for the suppression of illicit traffic in narcotic drugs.

22.2 The provisions of paragraph 1 do not affect the right of the coastal state to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving the internal waters or a port of the coastal state.

22.3 In the cases provided for in paragraphs 1 and 2, the coastal state shall, if the captain so requests, advise the consular authority of the flag state before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

22.4 In considering whether or how the arrest shall be made, the local authorities shall pay due regard to the interests of navigation.

22.5 The coastal state may not take any steps on board a foreign ship passing through territorial sea to arrest any person or to conduct any investigation in connection with

any crime commited before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters or a port of the coastal state.

Article I-A-23.1 The coastal state may not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

23.2 The coastal state may not levy execution against or arrest the ship for the purpose of any civil proceeding, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal state.

23.3 The provisions of paragraph 2 are without prejudice to the right of the coastal state, in accordance with its laws, to levy execution against or arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea or passing through the territorial sea after leaving internal waters or a port of the coastal state.

c. Rules Applicable to Special Category Ships

Article I-A-24.1 Foreign flag fishing vessels shall not be considered as exercising the right of innocent passage if they do not observe such laws and regulations as the coastal state may make and publish in order to prevent these ships from fishing in the territorial sea.

24.2 Marine research and hydrographic survey ships shall not be considered as exercising the right of innocent passage if they do not observe such laws and regulations as the coastal state may make and publish, subject to the provisions of Article I-A-17.1, with respect to marine and hydrographic research.

Article I-A-25.1 Nuclear powered ships, tankers and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to give proper notification of their passage to the coastal state and to confine their passage to such sealanes as may be designated for that purpose by the coastal state.

25.2 For the purpose of this Article, the term "tanker" includes any ship used for the carriage in bulk in a liquid state of petroleum, natural gas or any other highly inflammable, explosive, or pollutive substance.

Article I-A-26 Submarines and other underwater vehicles may be required to navigate on the surface and to show their flag except where they:

(a) Have given prior notification of their passage to the coastal state;

(b) If so required by the coastal state, confine their passage to such sealanes and depths as may be designated for that purpose by the coastal state.

Article I-A-27 Notification required by Articles I-A-25 and I-A-26 is subject to the procedures established in subsection a of this Chapter.

d. Rules Applicable to Government Ships

Article I-A-28 Rules contained in subsections a, b, and c shall apply to government ships operated for commercial purposes.

Article I-A-29.1 Rules contained in subsections a and c shall apply to government ships operated for non-commercial purposes.

29.2 With such exceptions as are contained in the provisions referred to in Articles I-A-28 and I-A-30, nothing in these articles affects the immunities which government ships enjoy under these articles or other rules of international law.

Article I-A-30.1 For the purpose of these articles, the term "warship" means a ship belonging to the armed forces of a state bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the state and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular naval discipline.

30.2 The rules contained in subsections a and c shall apply to warships.

30.3 Warships may be required to give prior notification of their passage to the coastal state.

30.4 Notification required by paragraph 3 is subject to the procedures established in subsection a of this Section 3. In addition, such notification shall not include information as to identity, mission or ultimate destination of the warship.

30.5 With such exceptions as are contained in the provisions referred to in Articles I-A-29 and I-A-30, nothing in these articles affects the immunities which warships enjoy under these articles or other rules of international law.

Article I-A-31 If, as a result of any noncompliance by any warship or other government ship operated for noncommercial purposes with any of the laws or regulations of the coastal state relating to innocent passage or with any of the provisions of these articles or other rules of international law, any damage is caused to the coastal state, including its environment or any of its facilities, installations or other property, or to any of its flag vessels, international responsibility for such damage shall be borne by the flag state of the ship causing such damage.

Chapter B - International Straits

Section 1. Nature, Characteristics and Delimitation

Article I-B-1.1 This part applies to any strait, including reasonably necessary approaches thereto, whatever its geographical name, which is used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign state and forms part of the territorial sea of more than one strait states.

1.2 In the case of archipelagic waters or international straits bordered by only one state, historic routes of navigation and commerce from a state's territorial sea to the high seas or to its territorial sea or the territorial sea of a foreign state or from the high seas to the high seas, shall be subject to this Chapter.

Article I-B-2 Strait states may designate corridors suitable for navigation by all ships and aircraft through and over international straits. In the case of straits where particular channels of navigation are customarily employed by ships in navigation, the corridors, so far as ships are concerned, shall include such channels. Strait states shall not place in the straits any installations which could interfere with or hinder navigation through the strait.

Section 2. Navigation Through International Straits

Article I-B-3 All aircraft and ships exercise freedom of navigation through and over international straits subject to the provisions of this Chapter.

Article I-B-4.1 The provisions of Articles I-A-13.3, I-A-14.2, I-A-14.3, I-A-21, I-A-24, and I-A-31 of this Part regarding foreign ships exercising the right of innocent passage through the territorial sea shall apply, mutantis mutandis, to ships exercising the freedom of navigation through international straits.

4.2 When the depth of the international strait is amenable to submerged navigation without interference with surface navigation, submarines for reasons of navigational safety must navigate in a submerged mode. Strait states may designate submerged sealanes for such navigation subject to Article I-A-18.

4.3 The provision of Article I-A-25 regarding special catagory ships in innocent passage through the territorial sea shall apply, mutatis mutandis, to merchant ships and to government ships, operated for commercial purposes, exercising the freedom of navigation through international straits.

4.4 Merchant ships and government ships operated for commercial purposes, exercising the freedom of navigation through international straits, shall comply with procedures for notification provided for in these articles. Failure to give such notice shall not result in the abridgement of the freedom of navigation but may result in liability under the provisions of Article I-A-19.

Article I-B-5 The provisions of Articles I-A-16 through I-A-20 of Chapter A of PART I of this Convention regarding the relationship between coastal states and ships engaged in innocent passage through the territorial sea shall apply, mutatis mutandis, to the relationship between strait states and ships exercising the freedom of navigation through the international straits, except that passage may not be suspended through international straits, and provided that the provisions of Article I-A-17.1(a) through (d) shall apply only to the extent that they give effect to applicable international conventions and standards.

Article I-B-6.1 Aircraft exercising freedom of navigation over international straits shall:

(a) Observe rules of the air established by the International Civil Aviation Organization under the Chicago Convention as they apply to civilian aircraft; other government aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;

(b) At all times monitor the radio frequency assigned by the appropriate internationally designated air traffic control authority or the appropriate international distress radio frequency;

(c) Take the necessary steps to keep within the boundaries of the corridors and at the altitude designated by the strait states for flights over the straits, and to avoid overflying the land territory of a strait state, unless such overflight is provided for by the delimitation of the corridor designated by the strait state.

6.2 The provisions of Article I-A-14.2 and 14.3 of this Convention regarding foreign ships exercising the right of innocent passage through the territorial sea shall apply, mutatis mutandis, to aircraft exercising the freedom of navigation over international straits.

Article I-B-7 The provisions of this Chapter shall not affect the legal regimes of straits where navigation is regulated by international agreements specifically relating to such straits.

Article I-B-8 User states and strait states should by agreement cooperate in the establishment and maintenance in a strait of necessary navigation and safety aids and other improvements in aid of international navigation and for the prevention and control of pollution from ships.

Article I-B-9 Any dispute between two or more Parties to this Convention concerning the interpretation or application of this Chapter shall, if settlement by negotiation between the Parties involved has not been possible [within one year of the filing of a protest by one Party with the other Party or Parties], and if these Parties do not otherwise agree, be submitted upon request of any of them to arbitration as set out in Protocol II to the present Convention.

Chapter C - Contiguous Zone

Article I-C-1 In a contiguous enforcement area adjacent to a state's territorial sea, the coastal state may exercise jurisdiction necessary to:

(a) Prevent infringement of its customs, fiscal, immigration, sanitary or pollution regulations within its territory or territorial sea;

(b) Punish infringement of the above regulations committed within its territory or territorial sea.

Article I-C-2.1 Where a coastal state finds and declares that, by virtue of the presence, passage or other activities of

one or more ships at any specific place or within any immediate area of the high seas adjacent to but outside the territorial seas of the coastal state, the infringement of the regulations established under Article I-C-1 is occurring or threatened, contiguous enforcement areas in proximity to such places or areas may be established for a period not to exceed six months.

2.2 Such contiguous enforcement areas shall only include such waters as are necessary to cope with the occurring or threatened activity.

2.3 In any case, a contiguous enforcement area shall not include any waters more than 60 nautical miles from nor more than 100 nautical miles along the baseline from which the breadth of the territorial sea is measured, nor any waters subject to the regime of international straits.

Article I-C-3 Settlement of disputes arising under this Chapter shall be in accordance with Article I-B-9.

Chapter D - Economic Resource Zone

Article I-D-1.1 For the purposes of navigation, the waters of the economic resource zone shall be high seas.

1.2 Ships exercising feeedom of navigation within the economic resource zone shall have due regard for the interests of the coastal state in its economic resource zone and shall take measures so as not unreasonably to interfere with activities in the zone.

Chapter E - High Seas

Article I-E-1 The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a state.

Article I-E-2.1 The high seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal states:

(a) Freedom of navigation;
(b) Freedom to lay submarine cables and pipelines;
(c) Freedom to fly over the high seas.

2.2 These freedoms and others which are recognized by the general principles of international law, shall be exercised by all states with reasonable regard to the interests

of other states in their exercise of the freedom of the high seas.

2.3 On the high seas, beyond the limits of coastal state economic resource zone jurisdiction, all states shall enjoy the freedom of fishing.

Article I-E-3.1 In order to enjoy the freedom of the seas on equal terms with coastal states, states having no seacoast should have free access to the sea. To this end states situated between the sea and a state having no seacoast shall by common agreement with the latter and in conformity with existing international convention accord:

(a) To the state having no seacoast, on a basis of reciprocity, free transit through their territory; and

(b) To ships flying the flag of that state treatment equal to that accorded to their own ships, or to the ships of any other states, as regards access to seaports and the use of such ports.

3.2 States situated between the sea and a state having no seacoast shall settle, by mutual agreement with the latter, and taking into account the rights of the coastal state or state of transit and the special conditions of the state having no seacoast, all matters relating to freedom of transit and equal treatment in ports, in case such states are not already parties to existing international conventions.

Article I-E-4 Every state, whether coastal or not, has the right to sail ships under its flag on the high seas.

Article I-E-5.1 Each state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the state whose flag they are entitled to fly. There must exist a genuine link between the state and the ship.

5.2 Each state shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article I-E-6.1 Ships shall sail under the flag of one state only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

6.2 A ship which sails under the flags of two or more states, using them according to convenience, may not claim any of the nationalities in question with respect to any other state, and may be assimilated to a ship without nationality.

Article I-E-7 The provisions of the preceeding articles do not prejudice the question of ships employed on the official service of an inter-governmental organization flying the flag of the organization.

Article I-E-8.1 Warships on the high seas have complete immunity from the jurisdiction of any state other than the flag state.

8.2 For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a state and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

Article I-E-9 Ships owned or operated by a state and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any state other than the flag state.

Article I-E-10.1 Every state shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard, inter alia, to:

(a) The use of signals, the maintenance of communications and the prevention of collisions;

(b) The manning of ships and labor conditions taking into account the applicable international labor instruments;

(c) The construction, equipment and seaworthiness of ships.

10.2 Every state is obliged effectively to exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. States not having the capability effectively to exercise such control may delegate their authority to do so to another state or public or private entity with the approval of that state or body. The state shall take the following action in respect of ships flying its flag:

(a) Maintain a register of shipping containing particulars of all ships flying its flag;

(b) Cause each ship before registration and thereafter, at the intervals prescribed by international regulations, to be surveyed by a qualified surveyor of ships;

(c) Ensure that each such ship is in the charge of a master and officers who possess appropriate qualifications in seamanship, navigation, marine engineering and the appropriate international regulations concerning the safety of life at sea, the prevention of collisions and radio communications;

(d) Ensure that each ship is adequately manned and equipped, including all necessary equipment for safe navigation;

(e) Assume jurisdiction under municipal law over the ship, master and crew, including the holding of enquiries into every serious marine casualty or incident of navigation on the high seas involving a ship flying its flag.

10.3 The flag state, in taking measures required under this Article, shall conform to generally accepted international regulations, procedures and practices;

10.4 A state which has reasonable grounds for suspecting that a flag state is failing to exercise control or take measures under this Article may request the flag state to take appropriate action or enter into appropriate negotiations. If the flag state fails to take appropriate action, any disputes shall be settled in accordance with Article I-B-9 of this Part.

10.5 Where a flag state fails effectively to exercise necessary control under this Article after being requested to do so by another state and any state is damaged thereby, the flag state must compensate the state so injured.

Article I-E-11.1 In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsiblity of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities either of the flag state or of the state of which such person is a national.

11.2 In disciplinary matters, the state which has issued a master's certificate or a certificate of competence or license shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the state which issued them.

11.3 No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag state.

Article I-E-12.1 Every state shall require the master of a

ship sailing under its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) After a collision, to render assistance to the other ship her crew and her passengers and, where possible, to inform the other ship of the name of his own ship, her port of registry and the nearest port at which she will call.

12.2 Every coastal state shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements, cooperate with neighboring states for this purpose.

Article I-E-13 Every state shall adopt effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever it flag, shall, ipso facto, be free.

Article I-E-14 All states shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state.

Article I-E-15 Piracy consists of any of the following acts:

15.1 Any illegal acts of violence, detention or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(a) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any state.

15.2 Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.

15.3 Any act of inciting or of intentionally facilitating an act described in subparagraph 1 or subparagraph 2 of this Article.

Article I-E-16 The acts of piracy, as defined in Article I-E-15 committed by a warship, government ship or government

aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article I-E-17 A ship or aircraft is considered a pirate ship or aircraft if it is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in Article I-E-15. The same applied if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Article I-E-18 A ship or aircraft may retain it nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the state from which such nationality was derived.

Article I-E-19 On the high seas or in any other place outside the jurisdiction of any state, every state may seize a pirate ship or aircraft, or a ship taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the state which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft, or property, subject to the rights of third parties acting in good faith.

Article I-E-20 Where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the state making the seizure shall be liable to the state, the nationality of which is possessed by the ship or aircraft, for any loss or damage caused by the seizure.

Article I-E-21 A seizure on account of piracy may only be carried out by warships or military aircraft, or other ships or aircraft on government service authorized to that effect.

Article I-E-22.1 Except where acts of interference derive from powers conferred by treaty, a warship which encounters a foreign merchant ship on the high seas is not justified in boarding her unless there is reasonable ground for suspecting:

(a) That the ship is engaged in piracy; or

(b) That the ship is engaged in the slave trade; or

(c) That, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

22.2 In the cases provided for in subparagraphs

(a), (b) and (c) above, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

22.3 If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

Article I-E-23.1 The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal state have good reason to believe that the ship has violated the laws and regulations of that state. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing state, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in Chapter C of this Part, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

23.2 The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third state.

23.3 Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued, or one of its boats or other craft working as a team and using the ship pursued as a mother ship, are within the limits of the territorial sea, or, as the case may be, within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

23.4 The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.

23.5 Where hot pursuit is effected by an aircraft:

(a) The provisions of paragraph 1 to 3 of this article shall

apply, mutatis mutandis;

(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal state, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.

23.6 The release of a ship arrested within the jurisdiction of a state and escorted to a port of that state for the purposes of an enquiry before the competent authorities, may not be claimed solely on the ground that the ship, in the course of its voyage, was escourted across a portion of the high seas, if the circumstances rendered this necessary.

23.7 Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

Article I-E-24 Every state shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account existing treaty provisions on the subject.

Article I-E-25.1 Every state shall take measures to prevent pollution of the seas from the dumping of all waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

25.2 All states shall cooperate with the competent, international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radioactive materials or other harmful agents.

Article I-E-26.1 All states shall cooperate in the repression of unauthorized transmission of radio or television broadcasts from a ship or installation on the high seas intended for reception by the general public contrary to international regulation, but excluding distress calls.

26.2 Any state where such transmissions can be received, suffering interference therefrom or of which the person broadcasting is a national may, as well as the flag

state of the vessel or installation, exercise the temporary jurisdiction necessary to terminate such broadcasts and prevent further transmissions.

Article I-E-27.1 All states shall be entitled to lay submarine cables and pipelines on the bed of the high seas.

27.2 Subject to its right to take reasonable measures for the exploration and exploitation of the natural resources of the economic resource zone, the coastal state may not impede the laying or maintenance of such cables or pipelines.

27.3 When laying such cables or pipelines, the state in question shall pay due regard to cables or pipelines already in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article I-E-28 Every state shall take the necessary legislative measures to provide that the breaking or injury, by a ship flying its flag or by a person subject to its jurisdiction, of a submarine cable beneath the high seas done wilfully or through negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and, similarly, the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offense. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article I-E-29 Every state shall take the necessary legislative measures to provide that if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article I-E-30 Every state shall take the necessary legislative measures to ensure the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.

Chapter F - Archipelagic States

Article I-F-1.1 An archipelagic state is a state constituted wholly or mainly by one or more archipelagoes.

1.2 For the purpose of these articles, an archipelago is a group of islands, including parts of islands, with interconnecting waters and other natural features which form an intrinsic geographical, economic and political entity or which historically have been regarded as such.

Article I-F-2.1 The sovereignty of an archipelagic state extends to the airspace, waters, seabed, subsoil and the resources thereof within the archipelagic waters.

2.2 Archipelagic waters are those waters enclosed by the baselines of archipelagic states subject to the provisions of Section 2 of Chapter A.

Article I-F-3 Subject to the provisions of Article I-B-1.2 regarding international straits and historic routes, and the provisions of Section 3 of Chapter A, innocent passage of foreign ships shall exist through archipelagic waters.

Chapter G - International Commission on Navigation

Article I-G-1 The states parties to the present convention hereby establish the International Commission on Navigation [Hereinafter referred to as "ICNAV"].

Article I-G-2 The purposes of ICNAV are:

(a) To provide machinery for uniformity among states in regulations and practices relating to navigation including, inter alia, sealanes, vessel traffic separation schemes, and vessel traffic systems;

(b) To provide for the exchange of information among states on matters under consideration by ICNAV.

Article I-G-3 ICNAV shall consist of an Assembly, a Council, a Navigation Council, a Secretariat, and such subsidiary organs as ICNAV may at any time consider necessary.

Article I-G-4.1 The Navigation Council shall consist of eighteen members elected by the Assembly from members, of which:

(a) Six members shall represent six of the Parties to the

Convention which are strait states adjacent to the ten major international straits. The ranking of international straits shall reflect the amount of foreign tonnage which had navigated the strait during the last calendar year;

(b) Six members shall represent six of the Parties to the Convention who are the top ten users of international straits. The ranking of users shall reflect the amount of flag state tonnage, including warships, which navigated those straits during the last calendar year;

(c) Six members shall represent Parties to the Convention not elected under (a) or (b) above, which will ensure the representation of all major geographic areas of the world.

4.2 Members shall be elected for terms of six years with the exception of the initial election which shall result in a two year term for category (c) and a four year term for category (b). Elections shall be held by the Assembly of ICNAV at its biannual meeting.

4.3 No Party to the Convention may have more than one representative on the Navigation Council at any time. However, members shall be eligible for reelection.

4.4 The Navigation Council shall be the Arbitration Tribunal which decides disputes in accordance with Protocol II.

PROTOCOL I

Article 1 Arbitration procedure, unless the Parties to the dispute decide otherwise, shall be in accordance with the rules set out in this Protocol.

Article 2 An Arbitration Tribunal shall be established upon the request of one Party to the convention addressed to another, in application of Article I-A-11.4 of the present Convention. The request for arbitration shall consist of a statement of the case together with any supporting documents.

Articles 3 through 11 Herein are incorporated Articles 11(e) through X of Protocol II to the 1973 Convention for the Prevention of Pollution by Ships, making such articles applicable to ICNAV.

PROTOCOL II

Article 1 Arbitration procedure, unless the Parties to the dispute decide otherwise, shall be subject to the rules set out in this Protocol.

Article 2.1 The request for arbitration shall consist of a statement of the case together with any supporting documents.

2.2 The requesting party shall inform the Secretary General of ICNAV of the fact that it has applied for arbitration by the Navigation Council, of the names of the Parties to the dispute and of the articles of the Convention over which there is, in its opinion, disagreement concerning their interpretation or application. The Secretary General shall transmit this information to all Parties.

Article 3 If any Party to the dispute is a member of the Navigation Council, the opposing Parties may place one additional member on the Navigation Council for the hearing and resolution of this dispute.

Article 4 The Tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

Article 5 The decision of the Navigation Council is taken by a two-thirds vote.

Article 6 Any Party to the Convention which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the Parties which have originally initiated the procedure, join in the arbitration with the consent of the Navigation Council.

Article 7.1 The Navigation Council shall render its award within a period of six months from the time it begins the hearing unless it decides, in the case of necessity, to extend the time limit for a further period not exceeding three months. The award of the Navigation Council shall be accompanied by a statement of reasons. It shall be final and without appeal and shall be communicated to the Secretary General of ICNAV. The Parties shall immediately comply with the award.

7.2 Any controversy which may arise between the Parties as regards interpretation or execution of the award may be submitted by either Party for judgment to the Navigation Council.

PART II - FISHERIES AND LIVING RESOURCE EXPLOITATION

Chapter A - The Territorial Sea

Article II-A-1 Subject to the provisions of these articles, its treaty obligations, and other rules of international law, a coastal state exercises exclusive sovereignty over all the living resources of its territorial sea, as defined in Part I, Chapter A.

Chapter B - The Economic Resource Zone

Article II-B-1 The provisions of Part III shall apply, *mutatis mutandis*, to this Chapter.

Article II-B-2 Conservation

2.1 The coastal state shall ensure the conservation of living resources within the economic resource zone.

2.2 For this purpose, the coastal state shall apply the following principles:

(a) Allowable catch and other conservation measures shall be established which are designed, on the best evidence available to the coastal state, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield of all exploitable species, taking into account relevant environmental and economic factors and any generally agreed global and regional minimum standards.

(b) Such measures shall take into account effects on species associated with or dependent upon harvested species and, at a minimum, shall be designed to maintain or restore populations of such associated or dependent species well above levels at which they may become threatened with extinction.

(c) Scientific information, catch and fishing effort statistics and other relevant data shall be contributed and exchanged on a regular basis.

(d) Conservation measures and their implementation shall not discriminate in form or fact against any fisherman. Conservation measures shall remain in force pending the settlement, in accordance with the provisions of Chapter II-E of any disagreement as to their validity.

Article II-3 Utilization

3.1 The coastal state shall ensure the full utilization of renewable resources within the economic zone.

3.2 For this purpose, the coastal state shall permit nationals of other states to fish for that portion of the

allowable catch of the renewable resources not fully utilized by its nationals, subject to the conservation measures adopted pursuant to Article II-B-4 and giving priority to landlocked states and states with limited access to living resources off their coasts. The coastal state may establish reasonable regulations and require the payment of reasonable fees for this purpose. Such regulations and fees shall not discriminate in form or fact against the nationals of any state.

3.3 Whenever another state is able to demonstrate that its vessels have carried on fishing in the economic resource zone of a coastal state on a substantial scale for a period of not less than 10 years prior to the enactment of this Convention, it may request, and the coastal state shall enter into, consultations with a view to:

(a) Analyzing the catch and effort statistics of the other state in order to establish the level of fishing operations carried out in the zone by the other state.

(b) Negotiating special arrangements with the other state under which the latter's vessels would be "phased out" of the fishery; and

(c) In the event of agreement not being reached through consultation there shall be a "phasing out" period of 5 years, during which time such state shall be exempt from fees charged by, but not exempt from nondiscriminatory conservation regulations enacted by, the coastal state.

Article II-B-4 Whenever necessary to reduce fishing by other states in order to accommodate an increase in the harvesting capacity of a coastal state, such reduction shall be without discrimination, and the coastal state shall enter into consultations for this purpose at the request of the state or states concerned with a view to minimizing adverse economic consequences of such reduction.

Article II-B-5 The coastal state may consider foreign nationals fishing pursuant to arrangements under Articles II-B-6 and II-B-7, as nationals of the coastal state for purposes of paragraph 2 above.

Article II-B-6 Neighboring Coastal States

Neighboring coastal states may allow each other's nationals the right to fish in a specified area of their respective economic resource zones on the basis of reciprocity, long and mutually recognized usage, or economic dependence of a state or region thereof, on exploitation of the resources of that area. The modalities of the exercise of this

right shall be settled by agreement between the states concerned. Such right cannot transferred to third parties unless provided otherwise by agreement.

Article II-B-7 Land-locked States

Nationals of a land-locked state shall enjoy the privilege to fish in the neighboring area of the economic zone of the adjoining coastal state on the basis of equality with the nationals of that state. The modalities of the enjoyment of this privilege shall be settled by agreement between the parties concerned.

Article II-B-8 International Cooperation Among States

8.1 States shall cooperate in the elaboration of global and regional standards and guidelines for the conservation, allocation, and rational management of living resources directly or within the framework of appropriate international and regional fisheries organizations.

8.2 Coastal states of a region shall, with respect to fishing for identical or associated species, agree upon the measures necessary to coordinate and ensure the conservation and equitable allocation of such species.

8.3 Coastal states shall give to all affected states timely notice of any conservation, utilization and allocation regulations prior to their implementation, and shall consult with such states at their request.

Article II-B-9 Assistance to Developing Countries

An international register of independent fisheries experts shall be established and maintained by the Food and Agriculture Organization of the United Nations. Any developing state party to the Convention desiring assistance may select an appropriate number of such experts to serve as fishery management advisers to that state.

Article II-B-10 Anadromous Species

10.1 Fishing for anadromous species seaward of the territorial sea (both within and beyond the economic resource zone) is prohibited, except as authorized by the state of origin in accordance with Articles II-B-4 and II-B-5.

10.2 States, through whose internal waters or territorial sea anadronous species migrate, shall cooperate with the state of origin in the conservation and utilization of such species.

Article II-B-11 Highly Migratory Species

Fishing for highly migratory species shall be regulated in accordance with the following principles:

11.1 Management. Fishing for highly migratory species, listed in Annex A, within the economic resource zone shall be regulated by the coastal state, and, beyond the economic resource zone, by the state of nationality of the vessel, in accordance with regulations established by appropriate international or regional fishing organizations pursuant to this Article.

(a) All coastal states in the region, and any other state whose flag vessels harvest a species subject to regulation by the organization, shall participate in the organization. If no such organization has been established, such states shall establish one.

(b) Regulations of the organization in accordance with this article shall apply to all vessels fishing the species regardless of their nationality.

11.2 Conservation. The organization shall, on the basis of the best scientific evidence available, establish allowable catch and other conservation measures in accordance with the principles of Article II-B-4.

11.3 Allocation. Allocation regulations of the organization shall be designed to ensure full utilization of the allowable catch and equitable sharing by member states. Allocations shall take into account the special interests of the coastal state, within whose economic resource zone highly migratory species are caught, and shall for this purpose apply the following principles within and beyond the economic resource zone.

(a) The coastal state has priority over other states to harvest the regulated species within its economic resource zone to the extent of its harvesting capacity, subject only to conservation measures issued by the organization designed to maintain or restore the regulated species and to provisions to the phase-out program provided below (which may include allocations of permissible catch levels of the regulated species among diferent coastal nations in proportion to their relative harvesting capacities).

(b) In order to avoid to the maximum extent possible severe economic dislocations in any state as a result of the application of this article, a state which is able to demonstrate that its vessels have carried on fishing for the regulated highly migratory species on a substantial scale, in the region under jurisdiction of the organization, for a period of not less than 10 years prior to the enactment of this Convention, may request

and the coastal state(s) shall enter into, consultations with a view to effecting the phaseout procedure, mutatis mutandis, described in Article II-B-3.1. The catch levels for the phaseout procedure, failing agreement with the coastal state(s), shall be determined by the organization; however, the phaseout period shall, in any event be 5 years.

11.4 Fees. The organization may collect fees on a nondiscrimination basis, based on fish caught both within and outside the economic zone for administrative and scientific research purposes.

Article II-B-11.5 Prevention of Interference. The organization shall establish fishing regulations for highly migratory species in such a way as to prevent unjustifiable interference with other uses of the sea, including coastal state fishing activities, and shall give due consideration to coastal state proposals in this regard.

11.6 Transition. Pending the establishment of an organization in accordance with this article, the provisions of this article shall be applied temporarily by agreement among the states concerned.

11.7 Interim Measures. If the organization or states concerned are unable to reach agreement on any of the matters specified in this article, any state party may request, on an urgent basis, pending resolution of the dispute, the establishment of interim measures applying the provisions of this article pursuant to the dispute settlement procedures specified in Article II-E-12. The immediately preceeding agreed regulations shall continue to be observed until interim measures are measures established.

Article II-B-12 Marine Mammals. Notwithstanding the provisions of this chapter with respect to full utilization of living resources, nothing herein shall prevent a coast state or international organization, as appropriate, from prohibiting the exploitation of marine mammals.

Article II-B-13 Enforcement

13.1 In the exercise of its rights under this chapter with respect to living resources, the coastal state may take such reasonable measures, including inspection and arrest, in the economic resource zone, and, in the case of anadromous species, seaward of the economic resource zones of the host state and other states, as may be necessary to ensure compliance with its laws and regulations, provided that

when the state of nationality of a vessel has effective procedures for the punishment of vessels fishing in violation of such laws and regulations, such vessels shall be delivered promptly to duly authorized officials of the state of nationality of the state of nationality of the vessel for legal proceedings, and may be prohibited by the coastal state from any fishing in the zone pending disposition of the case. The state of nationality shall within six months after such delivery notify the coastal state.

13.2 Regulations adopted by international organizations in accordance with Article II-B-11 shall be enforced as follows:

(a) Each state member of the organization shall make it an offense for its flag vessels to violate such regulations and shall cooperate with other states in order to ensure compliance with such regulations.

(b) The coastal state may inspect and arrest foreign vessels in the economic resource zone for violating such regulations beyond the economic resource zone.

(c) An arrested vessel of a state member of the organization shall be promptly delivered to the duly authorized officials of the flag state for legal proceedings if requested by that state.

(d) The state of nationality of the vessel shall notify the organization and the arresting states of the disposition of the case within six months.

13.3 Arrested vessels and their crew shall be entitled to release upon the posting of reasonable bond or other security. Imprisonment or other forms of corporal punishment in respect of conviction for fishing violations may be imposed only by the state of nationality of the vessel or individual concerned.

Chapter C - The High Seas Regulatory Authority

Article II-C-1 States shall cooperate with each other in the exploitation and conservation of living resources in areas beyond the economic resource zones of coastal states. States exploiting identical resources, or different resources located in the same area, shall enter into fisheries management agreement, and establish appropriate multilateral fisheries organizations, for the purpose of maintaining these resources. If such a body cannot be constituted among the concerned states, they may ask for the assistance of the Food and Agriculture Organization of the United Nations in establishing an appropriate regional of international regulatory body.

Article II-C-2 Conservation Measures. States, acting individually and through regional and international fisheries organizations, have the duty to apply the following conservation measures for such living resources:

(a) There shall be established allowable catch and other conservation measures which are designed, on the best evidence available to maintain or restore populations of harvested species at levels which can product the maximum sustainable yield, taking into account relevant environmental and economic factors, and any generally agreed global and regional minimum standards.

(b) Such measures shall take into account effects on species associated with or dependent species and at a minimum, shall be designed to maintain or restore populations of such associated or dependent species well above levels at which they may become threatened with extinction.

(c) For this purpose, scientific information, catch and fishing effort statistics, and other relevant data shall be contributed and exchanged on a regular basis.

(d) Conservation measures and their implementation shall not discriminate in form or fact against any fisherman. Conservation measures shall remain in force pending the settlement in accordance with the provisions of Chapter II-E, of any disagreement as to their validity.

Article II-C-3 Anadromous and Highly Migratory Species. With respect to anadromous species and highly migratory species, the provisions of Article II-B-10 and Article II-B-11, respectively, shall apply.

Chapter D - Effect on Existing Conventions and Agreements

Article II-D-1 Nothing contained in Part II of this Convention shall prejudice or be deemed to modify any bilateral or multilateral treaty, convention or agreement currently in force.

Chapter E - Settlement of Disputes

Article II-E-1.1 Any dispute which may arise between states under Part II of this Convention shall, at the request of any of the parties to the dispute, be submitted to special commission of five members unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations. The commission shall proceed in accordance with the following provisions.

1.2 The members of the commission, one of whom shall be designated as chairman, shall be named

between the states in dispute, within two months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon request of any state party to the dispute, be named by the Secretary General of the United Nations, within a further two-month period, in consultation with the states involved and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations amongst well qualified persons being nationals of states not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

1.3 Any state party to proceedings under these articles shall have the right to name one of its nationals to sit with the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.

1.4 The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on this matter.

1.5 Pending the final award by the special commission, measures in dispute relating to conservation shall be applied; the commission may decide whether and to what extent other measures shall be applied pending its final award.

1.6 The special commission shall render its decision, which shall be binding upon the parties, within a period of 5 months from the time it is appointed unless it decides, in the case of necessity to extend the time limit for a period not exceeding two months.

1.7 The special commission shall, in reaching its decision, adhere to this article and to any agreements between the disputing parties implementing this article.

ANNEX A - Highly Migratory Species

1. Albacore Tuna
2. Bluefin Tuna
3. Bigeye Tuna
4. Skipjack Tuna
5. Yellowfin Tuna
6. Pomfrets
7. Marlin
8. Sailfishes
9. Swordfish
10. Sauries
11. Dolphin (fish)
12. Cetaceans (whales and propoises)

PART III - THE ECONOMIC RESOURCE ZONE: COASTAL STATE SEABED JURISDICTION

Chapter A - Definition

Article III-A-1.1 Within and throughout an area known as the economic resource zone and located beyond and adjacent to its territorial sea, the coastal state exercises exclusive jurisdiction for the purpose of exploring and exploiting the living and nonliving natural resources, whether renewable or nonrenewable, of the seabed and subsoil and the superjacent waters.

1.2 Coastal state sovereign rights and jurisdiction in the economic resource zone shall be exercised in conformity with the provisions of this Convention.

1.3 The exercise of seabed jurisdiction by the coastal state in the economic resource zone shall be subject to and in conformity with the provisions of this Convention relatint to fisheries, navigation, scientific research, pollution and other provisions of international law applicable to the economic resource zone.

Chapter B - Delimitation

Article III-B-1.1 The outer limit of the economic resource zone shall not exceed 200 nautical miles measured from the applicable baselines of the territorial sea.

2.1 The delimitation of the economic resource zone between adjacent or opposite states shall be done by agreement between such states establishing an equidistant dividing line except in special circumstances, including the existence of islands or islets, wherein equitable principles, taking into account geological and geomorphological criteria, shall be applied to establish an equitable dividing line.

2.2 If the adjacent or opposite states are unable to reach agreement, the applicable dividing line shall be established under the procedures specified in this Convention for the determination of the dividing line of the territorial sea.

Chapter C - Provisions on Interference, Artificial Islands and Installations and Living Resources

Article III-C-1 Unjustifiable interference.

1.1 The coastal state shall exercise its jurisdiction in the economic resource zone without unjustifiable

interference with navigation or other uses of the zone reserved or permitted to other states by this Convention.

1.2 States shall not unjustifiably interfere with the exercise of coastal state jurisdiction in the economic resource zone.

Article III-C-2 Artificial islands and installations.

2.1 The coastal state shall have exclusive jurisdiction in the economic resource zone, to authorize and regulate the construction, operation, maintenance and use of artificial islands and installations constructed upon the seabed, affixed to the seabed or otherwise permanently moored within the economic resource zone for the purpose of exploring or exploiting natural resources or for other economic purposes.

2.2 The coastal state shall exercise jurisdiction in accordance with Articles I-A-17.1(a) through I-A-17.1(e) upon such artificial islands and installations to establish appropriate safety measures thereon. The coastal state shall also exercise jurisdiction within a 500 meter safety zone around any such islands or installation for the purpose of ensuring the safety of navigation and of the installation.

2.3 With regard to navigation in the economic resource zone the coastal state must give due publicity of the construction or existence of any such artificial islands or installations. A permanent conspicuous means of giving reasonalbe advance warning of the presence of any such islands or installations must be maintained by the coastal state. It shall be the responsibility of the coastal state to establish and maintain such navigational aids as will insure the safety of both the artificial islands and installations and vessels.

Article III-C-3 Living resources - Full utilization

3.1 The coastal state shall ensure the full utilization and the conservation of the living resources of its seabed located within the economic resource zone.

3.2 For the purpose of full utilization and conservation of living resources of the seabed Articles II-B-2 and II-B-3 of this Convention relating to full utilization and conservation of fisheries shall govern, mutatis mutandis, utilization and conservation of the living resources of the seabed located within the economic resource zone.

PART IV - THE SEABED AND OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

Chapter A - Principles

Herein are tabulated the recommended alternatives and comments on the 21 draft articles considered by the First Committee at the Third Conference on the Law of the Sea at Caracas, as reproduced in U.N. Document No. A/CONF.62/C.1/L.3, August 5, 1974.

Draft Article	Recommended Alternative	Comments
1	B	"Coastal Seabed Area" should be changed to "Economic Resource Zone as delimited in Part III, Chapter B of this Convention" and "article" changed to "Article III-A-1".
2	A	
3	B	
4		Bracketed language "with respect to" is preferable.
5		Bracketed language should be deleted.
6	A	Bracketed language should be deleted.
7		Paragraph 2 should be included, but with the phrase "coastal States" deleted.
8		This Article should include all of the four proposed paragraphs, and should exclude the proposal to replace the third and fourth paragraphs.
9	C	The following paragraph should be added to the text of Alternative C: "3. The Authority may decide, within the limits of its financial and technological resources, to conduct such activities. If the Authority so decides, it shall establish a separate international mining authority which shall be an independent entity and shall contract with the Authority on an equal, nondiscriminatory basis with other applicants.

Tabulation continued:

Draft Article	Recommended Alternative	Comments
10	A	Paragraph (2) should be deleted.
11	B	
12	D	
13		"[all] activities" should be changed to "exploration of the area and exploitation of its resources and other related activities which are specified in this Part."
14		Same as comment to draft article 13.
15	A	The second alternative for both paragraphs (1) and (2), respectively, under proposal A should be adopted. Paragraph (3) should be deleted from this Article.
16	A	In paragraph (1) the bracketed language "Neither these articles nor any rights granted or exercised pursuant thereto" is preferable. The phrase "as high seas" is not necessary and should be deleted. Paragraph (2) should be included, minus the phrase "Except as provided in these articles."
17		In paragraph (1) the bracketed language "be conducted with reasonable regard for" is preferable, and the phrase "not result in any unjustifiable interference with" should be inserted in paragraph (2). A special convention should be negotiated on this subject in the future.
18		This Article should be adopted in its entirety, including all bracketed language, except that "Party" is preferable in paragraph (4). A special convention should be negotiated on this subject in the future.
19		All bracketed language should be included, with the exception of the word "free."
20	A	In paragraph (1) the phrase "the state of historical and archeological" is preferable, and the bracketed language "or disposed of by the Authority, etc." should be deleted. Paragraph (2) should also be deleted.
21		See Section 4 of Chapter B of this Part, below.

Chapter B - Machinery

Due to space limitation and some general agreement in this area, the proposed articles regarding the machinery will be limited to those establishing subsidiary organs and dispute settlement procedures.

Section 1 - The Commissions

Article IV-B-1.1 There shall be a Rules and Recommended Practices Commission and an Economic Planning Commission.

1.2 Each Commission shall be composed of five to nine members appointed by the Council from among persons nominated by Parties. The Council shall invite all Parties to submit nominations.

1.3 No two members of a Commission may be nationals of the same state.

1.4 A member of each Commission shall be elected its President by a majority of the members of the Commission.

1.5 Each Commission shall perform the functions specified in this Convention and such other function as the Council may specify from time to time.

Article IV-B-2.1 Members of the Rules and Recommended Practices Commission shall have suitable qualifications and experience in seabed resource management, ocean science, maritime safety, ocean and marine engineering, and mining and mineral technology and practice. They shall not be employees of the Authority.

2.2 The Rules and Recommended Practices Commission shall:

(a) Consider, and recommend to the Council for adoption, Annexes to this Convention in accordance with Section 2 of this Chapter;

(b) Collect from and communicate to Parties information which the Commission considers necessary and useful in carrying out its functions.

Article IV-B-3.1 Members of the Economic Planning Commission shall have suitable qualifications and experience in seabed resource management, ocean sciences, and economics. They shall not be employees of the Authority.

3.2 The Economic Planning Commission shall:

(a) Maintain constant study of the economic implications of development of the seabed resources upon all Parties.

(b) Consider, and recommend to the Council for adoption, appropriate economic measures in accordance with Section 3 of this Chapter.

(c) Collect from and communicate to Parties information which the Commission considers necessary and useful in carrying out its function.

Section 2 - The Rules and Recommended Practices Commission

Article IV-B-4.1 Rules and Recommended Practices are contained in Annexes to this Convention.

4.2 Annexes shall be consistent with this Convention, its Annexes and any amendments thereto. Any Party may challenge an Annex, an amendment to an annex, or any of their provisions, on the grounds that it is unnecessary, unreasonable or constitutes a misuse of powers, by bringing the matter before the Tribunal in accordance with the provisions of Section 4 of this Chapter.

4.3 Annexes shall be adopted and amended in accordance with Article IV-B-5. Those Annexes adopted along with this Convention, if any, may be amended in accordance with Article IV-B-5.

Article IV-B-5 The Annexes to this Convention and amendments to such Annexes shall be adopted in accordance with the following procedure:

(a) They shall be prepared by the Rules and Recommended Practices Commission and submitted to the Parties for comments;

(b) After receiving the comments, the Commission shall prepare a revised text of the Annex or amendments thereto;

(c) The text shall then be submitted to the Council which shall adopt it or return it to the Commission for further study;

(d) If the Council adopts the text, it shall submit it to the Parties;

(e) The Annex or an amendment thereto shall become effective within three months after its submission to the Parties, or at the end of such longer period of time as the Council may prescribe unless in the meantime more than one-third of the Parties register their disapproval with the Authority;

(f) The Secretary General shall immediately notify all states of the coming into force of any Annex or amendment thereto.

Article IV-B-6.1 Annexes shall be limited to the Rules and Recommended Practices necessary to:

(a) Fix the level, basis, and accounting procedures for determining international fees and other forms of payment;

(b) Establish work requirements;

(c) Establish criteria for defining technical and financial competence of applicants;

(d) Assure that all exploration and exploitation activities, and all deep drilling, are conducted with strict and adequate safeguards for the protection of human life and safety and of the marine environment;

(e) Protect living marine organisms from damage arising from exploration and exploitation activities;

(f) Prevent or reduce to acceptable limits interference arising from exploration and exploitation activities with other uses and users of the marine environment;

(g) Assure safe design and construction of fixed exploration and exploitation installations and equipment;

(h) Facilitate search and rescue services, including assistance to aquanauts, and the reporting of accidents;

(i) Prevent unnecessary waste in the extraction of minerals from the seabed;

(j) Standardize the measurement of water depth and the definition of other natural features pertinent to the determination of the precise location of International Seabed Boundaries;

(k) Prescribe the form in which Parties shall describe their boundaries and the kinds of information to be submitted in support of them;

(l) Promote uniformity in seabed mapping and charting;

(m) Establish and prescribe conditions for the use of international marine parks and preserves;

6.2 Application of any Rule or Recommended Practice may be limited as to duration or geographic area, but without discrimination against any Party or person.

Article IV-B-7 The Contracting Parties agree to collaborate with each other and the appropriate Commission in securing the highest practicable degree of uniformity in regulations, standards, procedures and organizations in relation to the matters covered by Article IV-B-6 in order to facilitate and improve seabed resources exploration and exploitation.

Article IV-B-8 Annexes and amendments thereto shall take into account existing international agreements and, where appropriate, shall be prepared in collaboration with other competent international organizations. In particular, existing international agreements and regulations relating to safety of life at sea shall be respected.

Article IV-B-9.1 Except as otherwise provided in this

Convention, the Annexes and amendments thereto adopted by the Council shall be binding on all Parties.

9.2 Recommended Practices shall have no binding effect.

Section 3 - The Economic Planning Commission

Article IV-B-10.1 The Economic Planning Commission shall maintain a constant study of the economic implications of the development of the seabed resources upon all Parties.

10.2 The Commission shall advise the Council of any detrimental economic effects that are caused or may be caused by development of seabed resources and shall recommend appropriate measures for the Council to take.

10.3 The Commission may recommend any or all of the following measures:

(a) Limited access to the industry of seabed resource development;

(b) Negotiation of worldwide commodity agreements;

(c) Compensatory payments to those states adversely affected by the development of seabed resources.

Article IV-B-11.1 Each member of the Economic Planning Commission shall have one vote.

11.2 Decision by the Commission to recommend that appropriate economic measures be taken by the Council shall require approval by a two-thirds majority of all its members.

Article IV-B-12 The Economic Planning Commission may consult with or invite the collaboration of existing competent international organizations.

Section 4 - Dispute Settlement

Article IV-B-13 Tribunal for peaceful settlement of disputes over the deep ocean floor.

13.1 Jurisdiction:

(a) The Tribunal shall have jurisdiction over all disputes of any nature whatsoever arising out of the subject matter or activities undertaken under this Part IV of this Convention;

(b) All parties to the treaty shall be under the obligation to seek voluntary solution pursuant to Article 33 of the Charter of the United Nations;

(c) Submission to the Tribunal for settlement shall be mandatory upon application by one of the parties and after exhaustion of all administrative remedies;

(d) States, individual and juridical persons, international

organizations, and organizations shall be within the jurisdiction and process of the Tribunal;

(e) Nationals of any state are subject to the jurisdiction of their state when all parties to the dispute are from the same state. However, any state may submit their nationals to the Tribunal for a binding decision. In the alternative any state may request an advisory opinion from the Tribunal as to the interpretation and application of Part IV of this Convention.

(f) The Tribunal shall apply the body of law created by this Convention and any relevant principles of international law. If, in the judgment of the Tribunal, there exists a substantial unresolved question of international law, the Tribunal may submit the same to the International Court of Justice for an advisory opinion.

13.2 Procedure:

(a) Rules of Procedure shall be established by the Tribunal, keeping in mind that simplicity and expeditious handling will be desirable;

(b) The Tribunal may sit in session at a location agreed upon by the parties if such is in the interest of expediting the procedure;

13.3 The Tribunal:

(a) The Tribunal shall be arbtitral in form. Parties to the dispute shall each select one arbitrator from a panel. The two selected arbitrators shall select a third arbitrator. Decisions shall be by majority vote;

(b) Members of the Tribunal shall be selected from a panel of members consisting of fifteen individuals selected by the legislative branch of the Regime. Said members shall be chosen with due regard to their knowledge and competence within the subject areas covered by the seabed regime, as well as their own personal reputation for integrity;

(c) Due regard shall be given to representation of the various legal systems of the world.

13.4 Judgment:

(a) All decisions by the Tribunal are final and binding upon all parties without appeal. The decision of the Tribunal may be reconsidered within one year if any material information has been discovered which should have been considered but could not have been discovered by due diligence at the time;

(b) In the event of conflicts in decisions between Tribunals, upon request, each party shall select three members from the panel of arbitrators who in turn shall jointly select an additional three for a total of nine. Due regard shall be given to

the panel's expertise and the various legal systems of the world. This nine man board shall settle the conflicting decisions;

(c) The Tribunal shall be competent to determine methods of giving effect to its decisions and to issue all necessary orders.

(1) The enforcement of a Tribunal judgment is the obligation of all states parties to this Convention.

(2) A judgment of the Tribunal creates rights and duties automatically enforceable in municipal law.

(3) A judgment of the Tribunal is enforceable in the states parties to this Convention as though it were the decision of the highest court of that state.

(4) No claim of sovereign immunity shall be available against a judgment of the Tribunal.

Chapter C - Conditions of Exploration and Exploitation

Article IV-C-1 General.

1.1 All commercial prospecting, evaluation and exploitation activities in the international seabed area, which have as their principal or ultimate purpose the discovery, appraisal or exploitation of mineral deposits, shall be conducted in accordance with this Convention, these regulations, supplementary regulations promulgated by the Authority in accordance with this Convention, and the terms and conditions of the contracts.

1.2 Any contracts entered into between the Authority and other entities as defined in Article IV-C-2 must be drawn in strict accordance with this Convention, these regulations and supplementary regulations promulgated by the Authority in accordance with the provisions of this Convention. (Hereinafter, the term "this Convention" shall be deemed to include these regulations and supplementary regulations promulgated in accordance with the provisions of this Convention.) The Authority shall not have the right to require terms and conditions in the contracts not found in this Convention.

Article IV-C-2 Legal relationships.

2.1 The Authority may enter into contracts concerning evaluation and exploitation with the international mining authority, if such an entity is established, a Contracting Party, group of Contracting Parties or natural or juridical persons which obtain the sponsorship of a Contracting Party or group of Parties (hereinafter referred to as "Party or Person").

The Authority may not enter into contracts for such purposes with any other entity.

2.2 In those cases in which a Contracting Party elects to act as a Sponsoring Party rather than as the direct recipient of the rights granted pursuant to contracts, the Sponsoring Party shall be responsible for the performance of any duties or obligations imposed by this Convention on natural or juridical persons which it sponsors.

2.3 The contracts shall grant the right to mine. The right to mine shall include both the evaluation and the exploitation of mineral deposits.

2.4 It shall not be necessary to enter into contracts to engage in commercial prospecting, which shall be governed by the provisions of Article IV-C-3.

Article IV-C-3 The right to conduct commercial prospecting.

3.1 All states and persons natural or juridical shall have the right to conduct commercial prospecting in the international seabed area in accordance with the provisions of this Convention.

3.2 The term "commercial prospecting" shall, for the purpose of this Convention, mean the carrying out of geophysical and geochemical measurements, bottom sampling, dredging, drilling and other forms of subsurface entry with the intention of locating mineral deposits for the purpose of evaluation and exploitation.

3.3 Any state or person, natural or juridical, conducting commercial prospecting activities shall so inform the Authority. The Authority shall acknowledge receipt of this information by issuing a prospecting certificate.

3.4 The prospecting certificate shall be issued for a two-year period and shall be automatically reissued for additional two-year periods.

Article IV-C-4 General conditions of the right to mine.

4.1 Any Party or Person, as defined in Article IV-C-2.1, shall be entitled to enter into contracts with the Authority, which shall grant the right to mine to such Party or Person (hereinafter referred to as the miner) when the following conditions have been met:

(a) The miner declares to the Authority that in his judgment exclusive rights to an area or areas are essential to the pursuit of further commercial activity. In the case of a miner who is a natural or juridical person, the declaration to the Authority shall be made by his Sponsoring Party,

(b) In the case of a miner who is a natural or juridical person, he shall submit to the Sponsoring Party all raw data which he has acquired from the international seabed area prior to the date of his application for a right to mine to the extent such data concern the physical and chemical properties of the area or areas and the resources for which he seeks an exclusive right to mine. The Sponsoring Party shall ensure that appropriate protection is provided for such data in order to protect the commercial value of such data to the miner;

(c) The miner shall describe the category of mineral or minerals for which he seeks the right to mine. The right to mine shall only extend to minerals within that category. The mineral or minerals shall be described as falling within one of the following two categories:

Category (i) Fluids or minerals extracted in a fluid state, such as oil, gas, helium, carbon dioxide, water, sulphur and saline minerals, steam, hot water or brine or geopressured fluids, metalliferous muds and any hard minerals found more than three meters beneath the surface of the seabed.

Category (ii) Hard minerals on the surface of the seabed or beneath the surface of the seabed not deeper than three metres including nodules.

(d) The Sponsoring Party, in the case of a natural or juridical person, shall ascertain the financial and technical competence of the miner and shall provide assurances to the Authority that the miner is financially and technically competent to engage in mining and comply with the conditions imposed by this Convention;

(e) The miner shall agree to comply with this Convention and any Tribunal orders or decisions;

(f) The Authority shall be entitled to receive an application fee not to exceed (US $50,000) to defray the administrative expenses of the Authority;

4.2 Upon receipt by the Authority of the declarations, statements, assurances and application fee required pursuant to paragraph 4.1, the Authority shall enter into a contract granting the right to mine to the Party or Person requesting it.

4.3 The size of the area or areas and the precise manner in which the area or areas is described shall be in conformity with supplementary regulations to be promulgated by the Authority in accordance with the terms of this Convention.

4.4 The right to mine shall be an exclusive right to mine in that no other Party or Person shall be granted any right to evaluate or exploit minerals in the same category and area.

4.5 In the event any Party or Person applies for the right to mine the same category of minerals in the same or an overlapping area applied for by another Party or Person, the right to mine shall be determined by supplementary regulation to be promulgated by the Authority in accordance with the terms of this Convention.

Article IV-C-5 The right to mine - evaluation and exploitation phases.

5.1 The right to mine shall be conducted in two phases: (a) an evaluation phase which shall commence when the right to mine is granted and shall terminate when commercial production is achieved as defined in paragraph 5.3 of this article or at the end of 15 years, whichever occurs first; (b) an exploitation phase which shall commence when the evaluation phase is terminated and which shall terminate after 20 years. An additional period of 20 years shall be granted for exploitation under the original right to mine at the option of the miner, but the right to mine shall be amended to be made subject to such regulations as are in force at that time.

5.2 The miner shall forfeit the right to mine at the end of the evaluation phase if he has not achieved commercial production as defined in paragraph 5.3 of this article.

5.3 Commercial production shall be deemed to have begun if, for a period of six consecutive months, the miner engages in activity of sustained large-scale recovery operations which yield a quality of material sufficient to clearly indicate that the principal purpose is large-scale production rather than production intended for information gathering, analysis, equipment or plant testing.

5.4 In the event the appropriate organ of the Authority determines that commercial production has been achieved, it may require that the miner commence the exploitation phase. In the event of a dispute between the Authority and the miner concerning whether the miner has commenced commercial production, the evaluation phase shall continue until the dispute has been settled in accordance with dispute settlement procedures provided for in this Convention. Any other Party or Person who believes that a Party or Person holding a right to mine has commenced commercial production but has not entered into the exploitation phase of his right to mine may request the Authority to so determine and, in the event of disagreement with the Authority's determination, may resort to the dispute settlement procedures provided for under this Convention.

5.5 Any Party or Person which has obtained the

right to mine shall, if the right is forfeited under paragraph 5.2 of this article, make available all data which it has acquired as defined in Article IV-C-4.1(b) to the Authority. In the case of a natural or juridical person such data shall be submitted by the Sponsoring Party. The Authority shall make such data available to the public immediately upon receipt.

Article IV-C-6 Requirement to ensure diligence during the evaluation phase.

6.1 In order to ensure that the miner carries out his evaluation work in a diligent manner, he shall be required to make specific expenditures. The Authority shall promulgate supplementary regulations on this diligence requirement in accordance with the terms of this Convention. These expenditure requirements shall be applied in such a manner as to assure that they do not discriminate in form or in fact between different miners.

Article IV-C-7 Relinquishment and renunciation.

7.1 The contractor shall relinquish one third of the area in respect of which it has been awarded a contract before beginning any exploitation.

7.2 The contractor may at any time renounce the whole or part of the area in respect of which it has been awarded a contract.

7.3 The Authority, within a period of three months after relinquishment or renunciation, shall publicize the areas, or parts of areas, which have been relinquished or renounced.

Article IV-C-8 Participation of nationals of countries without seabed exploration and exploitation capability. The applicant shall indicate in his application the steps to be taken in order to ensure the participation in the activities envisaged of nationals of countries without seabed exploration and exploitation capability, with a view to ensuring the training of such nationals.

Article IV-C-9 Inspection and supervision information to be supplied to the Authority.

9.1 The Authority shall be entitled to carry out inspection and supervisory measures, in accordance with the terms of the contract, in order to ensure that work is undertaken in conformity with this Convention and its annexes.

9.2 The contractor shall place at the disposal of the Authority any information concerning resources it has

collected during work carried out in an area.

Article IV-C-10 Transferability of the right to mine.

10.1 The right to mine shall be freely transferable provided the transferee agrees to comply with all applicable provisions of this Convention and any Tribunal orders or decisions.

10.2 In the case of a transferee who is a natural or juridical person, such person must obtain the approval of the transferor's Sponsoring Party to the transfer unless the transferee elects to obtain the sponsorship of another Party or group of Parties in which case such new Sponsoring Party shall have previously certified to the Authority its willingness to assume the role of Sponsoring Party immediately upon the completion of the transfer of rights and certifies compliance with Article IV-C-4.1(d).

10.3 The right to mine may be transferred in whole or in part.

10.4 The rights of the transferee, whether transferred in whole or in part, shall be identical to the rights held by the transferor prior to the transfer.

Article IV-C-11 Financial arrangements. The financial arrangements between the Party or Person and the Authority shall be promulgated by the Authority in supplementary regulations in accordance with the terms of this Convention.

PART V - MARINE SCIENTIFIC RESEARCH AND THE DEVELOPMENT AND TRANSFER OF TECHNOLOGY

Chapter A - General Principles

Article V-A-1 States shall endeavor to promote and facilitate the development and conduct of marine scientific research, not only for their own benefit but also for the benefit of the international community with the provisions of this Convention.

Article V-A-2 In the conduct of marine scientific research, the following general principles shall apply:

(a) Marine scientific research activities shall be conducted exclusively for peaceful purposes.

(b) Such activities shall not unduly interfere with other legitimate uses of the sea compatible with the provisions of this Convention and shall be duly respected in the course of such uses.

(c) Such activities shall comply with regulations established in conformity with the provisions of this Convention, for the preservation of the marine environment and the perpetuation of its biological resources.

Article V-A-3 Marine scientific research activities shall not form the legal basis for any claim whatsoever to any part of the marine environment or its resources.

Article V-A-4 Marine scientific research shall be conducted subject to the rights of coastal states as provided for in this Convention.

Chapter B - International and Regional Cooperation for Marine Scientific Research including Exchange and Publication of Scientific Data

Article V-B-1 States shall, in accordance with the principle of respect for sovereignty and on the basis of mutual benefit, promote international cooperation in marine scientific research for peaceful purposes.

Article V-B-2 States shall cooperate with one another, through the conclusion of bilateral and multilateral agreements, to create favorable conditions for the conduct of scientific research

in the marine environment and to integrate the efforts by scientists in studying the essence of and the interrelations between phenomena and processes occuring in the marine environment.

Article V-B-3 States shall, both individually and in cooperation with other states and with competent international organizations, actively promote the flow of scientific data and information and the transfer of knowledge resulting from marine scientific research in particular to developing countries, as well as strengthening of the autonomous marine research capabilities of developing countries through, inter alia, programmes to provide adequate education and training of their technical and scientific personnel.

Article V-B-4 The availabilty to every state of information and knowledge resulting from marine scientific research shall be facilitated by effective international communication of proposed major programs and their objectives and by publication and dissemination of the results through international channels.

Chapter C - Coastal State Consent

Article V-C-1 Marine scientific research in the territorial sea shall be conducted only with the consent of the coastal state.

Article V-C-2 Marine scientific research in the economic resource zone shall be conducted only with the consent of the coastal state, except that consent shall not normally be withheld when the proposed marine scientific research is not aimed directly at the exploration or exploitation of the living or nonliving resources.

Article V-C-3 States and appropriate international and regional organizations as well as persons, juridical and natural, seeking consent of the coastal state to conduct marine scientific research in the territorial sea or the economic zone, shall:

(a) Provide the coastal state with a full description of:

(i) the nature and objectives of the research project

(ii) the means to be used, including equipment and name, tonnage, type and class of vessels

(iii) the specific geographical areas in which the activities are to be conducted

(iv) the expected date of first appearance and final departure of the research team, equipment or vessels as the case may be

(v) relevant particulars concerning proposed scientific personnel and their qualification; and
(vi) any changes in the above, which shall be kept up to date: and

(b) Undertake to
(i) ensure the right of the coastal state to participate or be represented in all phases of the research project, if it so desires;
(ii) provide to the coastal state on an agreed basis, raw and processed data and samples of material;
(iii) assist the coastal state in assessing the implications of the data, smaples, and results, if it so desires;
(iv) ensure that research results are published as soon as feasible in a readily available scientific publication unless otherwise agreed;
(v) comply with all relevant provisions of this Convention; and
(vi) fulfill any other requirement that may be agreed upon.

Article V-C-4 The provisions of Article V-C-3(a) shall apply to marine scientific research conducted by means of Oceanographic Data Acquisition Systems (ODAS).

Article V-C-5 The coastal state shall reply promptly to a request accompanied by the information required by it in accordance with the provisions of Article V-C. The coastal state shall facilitate the conduct of marine scientific research to which it has consented by extending necessary facilities to ships and scientists while they are operating in areas within its jurisdiction wherever possible.

Article V-C-6 The exercise of innocent passage and navigation does not confer on states, international organizations or other juridical or natural persons the right to undertake marine scientific research.

Article V-C-7 States, international organizations or other juridical or natural persons conducting research in the territorial sea or the economic zone shall take due account of the legitimate interests and rights of the neighboring land-locked and other geographically disadvantaged states of the region, as provided for in this Convention, and shall notify these states of the proposed research project, as well as provide, at their request, relevant information and assistance as specified in

Article V-C-3(a) (i), (vi), and (b) (iii). Such neighboring land-locked and other geographically disadvantaged states shall be offered at their request, where research facilities permit, the opportunity to participate in the proposed research project.

Article V-C-8 Marine scientific research in the international area may be carried out by all states, international organizations or other juridical or natural persons.

Chapter D - Legal Status of Installations for Marine Environmental Research

Article V-D-1 Fixed or floating scientific research installations or equipment located within the areas of national jurisdiction and/or sovereignty shall be subject to the jurisdiction of the coastal state. These installations or equipment shall not have the status of islands or possess their own territorial waters, and their existence shall not affect the delimitation of the territorial sea, or the economic resource zone of the coastal state.

Chapter E - Responsibility and Liability

Article V-E-1.1 States shall be responsible for marine scientific research conducted in the marine environment by them or by their nationals, natural or juridical. International organizations shall be similarly responsible for such research conducted by them or on their behalf.

1.2 States and international organizations shall be liable for damage caused to the marine environment, arising out of marine scientific research, when such damage is attributable to them. When such damage is attributable to their nationals, states shall undertake to provide recourse with a view to ensuring equitable compensation for the victims thereof.

PART VI - PREVENTION OF POLLUTION OF THE MARINE ENVIRONMENT

Chapter A - General Rights and Obligations

Article VI-A-1 All states have the fundamental right and obligation to protect and preserve the marine environment.

Article VI-A-2 In discharging this right and obligation, states shall use best practicable means at their disposal, and within their capabilities, to reduce pollution and ensure that pollution generated by activities within their jurisdiction does not go beyond the limits of their national jurisdiction and cause damage to other states.

Article VI-A-3 In taking measures to prevent or control marine pollution states shall guard against the effect of merely transferring, directly or indirectly, damage or hazard from one area to another or from one type of pollution to another.

Article VI-A-4 States shall be permitted to establish pollution control zones in accordance with the provisions of Artical VI-B-2(h) of this Convention.

Article VI-A-5 To facilitate the elimination of all sources of pollution having an impact upon the marine environment, all states agree to adopt internal procedures which enable them to make available to any other state, pollution-free technology, techniques of neutralizing and eliminating existing pollution, and designs for closed systems which are compatible with natural biological ecosystems.

Article VI-A-6 In the event of grave and imminent threat and danger to the marine environment, states shall immediately notify the International Pollution Control Authority and collaborate on the best unilateral protective action in which a state may engage, compatible with minimizing the environmental impact on the coastal state as well as on the global marine environment.

Article VI-A-7 Within the limits of the economic resource zone beyond the territorial sea, coastal states may enact limited pollution prevention legislation. The content of this legislation shall be strictly limited to maintaining environmental quality adequate to ensure that the reproductive capacity and life

processes of living resources are not impaired, to preventing contaminants dangerous to human life and health from becoming concentrated to dangerous levels in marine food chains, and to preventing economic damage to nonliving resources of the economic resource zone.

Chapter B - International Pollution Control Authority

Article VI-B-1 States shall establish an International Pollution Control Authority constituted in accordance with the provisions that follow: --to be decided and inserted later.

Article VI-B-2 The responsibilities of the International Pollution Control Authority shall be to:

(a) Study and catalog all known marine pollutants according to common characteristics of biodegradability, temperature effects, toxicity, environmental impact, concentratability and other relevant characteristics.

(b) Formulate regulations for areas beyond the (territorial sea and economic resource zone) prohibiting the discharge or dumping of those materials and compounds which are highly toxic, persistent, or likely to become concentrated in the marine food chain; and regulating the discharge or dumping of all other less dangerous substances.

(c) Make recommendations to coastal states on those materials which, through internal legislation, should be prohibited from entering the coastal states's marine environment in the territorial sea and economic resource zone due to toxicity, persistence, concentration or other potential dangers.

(d) Act as a clearinghouse for information and studies on effects of pollutants on the marine environment, techniques to control or neutralize existing pollution, pollution-free technology, and any other marine pollution subjects of mutual interest to the world community.

(e) Utilize conventional as well as innovative pollution observation techniques and source and impact prediction techniques to monitor locations and levels of marine pollution, and to predict areas of potential danger, for the common benefit of the world community in isolating and minimizing the areas and effects of marine pollution.

(f) Encourage the use of biological controls over those types of marine pollution which are not incompatible with existing marine biological ecosystems.

(g) Study global marine transport mechanisms and identify region wherein pollutants tend to remain confined, and with these regions, encourage the formation of regional groups to provide

coordinated attacks upon marine pollution within their respective regions.

(h) Study and catalog the ecologically sensitive and vulnerable areas of the world and identify the particular pollutants which pose a threat to the continued viability of each marine ecosystem. Where protection can best be effected through the establishment of a control zone on the part of a coastal state, such action shall be permitted after the Authority has reviewed and approved the content, purposes and extent of the zone. Where protection can best be effected through joint enforcement procedures on the part of a group of states belonging to a coherent region, the Authority shall recommend to the appropriate states the formation of a regional attack on the pollution problem. Where protection can best be effected through an international cooperative effort on the part of all states, the Authority shall make recommendations (suggesting) restrictions on certain activities causing marine pollution of levels dangerous to the entire world community.

(i) Promulgate environmental standards for exploration and exploitation activities outside the limits of states' (territoral sea economic resource zone), and promulgate recommended uniform environmental standards for exploration and exploitation activities within the limits of states' territorial seas and economic resource zones.

Chapter C - Control of Land-Based Sources of Pollution

Article VI-C-1 All states shall take appropriate internal measures to control and minimize land-based sources of pollution of the marine environment.

Article VI-C-2 With regard to those toxic, persistent, concentratable and other dangerous substances which the International Pollution Control Authority recommends should be prohibited from entering the marine environment. States shall take all reasonable and appropriate internal legislative and administrative measures to control and strictly limit their introduction into the marine environment from areas within a state's national jurisdiction, including airborne pollution and any transport mechanism from land source polution.

Article VI-C-3 States shall adopt and enforce internal pollution abatement legislation consonant with the principles of this Convention. Failing to do so, and if pollution damage to a second state results therefrom, the offending state shall be

liable for damage caused by marine pollution originating in the offending state which with reasonable certainty would have been averted had the offending state enacted reasonable pollution prevention legislation.

Article VI-C-4 With regard to the above provision regarding state liability, as well as any other liability imposed for marine pollution damage to a second state, a uniform standard of care shall be applied to all states. However, in imposing upon an offending state a duty to compensate an injured state for marine pollution damages, consideration shall be taken of the financial and economic capability of a state to discharge its obligations to prevent reduce, control, and eliminate marine pollution.

Chapter D - Control of Vessel-Based Sources of Pollution

Article VI-D-1 States shall have the right and the primary obligation to ensure that ships flying their flag comply with the provisions of this convention relating to the protection and preservation of the marine environment from pollution.

Article VI-D-2 States shall inspect ships flying their flag anywhere and at any time interval provided for by regulations adopted in accordance with this Convention, or more frequently if deemed appropriate, and issue certification of compliance with the regulations such certifications shall be kept aboard the vessel subject to inspection by any pollution enforcement entity. Inspection duties may be delegated pursuant to Article I-E-10.

Article VI-D-3 If it is found that a flage state has either issued a certificate which does not comply with the marine environmental protection requirements of applicable conventions and regulations, or that the condition of a ship flying its flag does not conform with the certificate or the requirements of the regulations and, as a result of this failure to comply with the regulations, marine pollution results, the issuing state shall be internationally responsible for damage to other states resulting from the pollution incident and shall pay appropriate compensation, subject to the provisions of Article VI-C-4 taking account of a state's financial and economic capability to discharge its obligations.

Articles VI-D-4 through VI-D-7 are incorporated in these draft articles from Articles II, III, IV, and V of the Federal Republic

of Germany draft articles on Enforcement of Regulations Concerning the Protection of the Marine Environment Against Vessel-Source Pollution. U.N. Document No. A/CONF.62/C.3/L.7. The only exceptions are that "contiguous enforcement area," is inserted before "territorial sea" in the last paragraphs of Articles II and III of the FRG draft, and that the final phrase in Article IV, paragraph 1, is changed to: "request the ship to stop and board it."

DISCUSSION

I - NAVIGATION AND OTHER COMMON USES

The historic struggle between inclusive uses of the ocean and exclusive claims to sovereign jurisdiction has been reflected in the concept of "freedom of the seas" and zones of national jurisdiction. World solidarity and international cooperation increase when the oceans function not as barriers between nations but as readily accessible modes of communication between the peoples of a world community. McDougal and Burke, Crisis in the Law of the Sea: Community Perspectives Versus National Egoism, 67 Yale L.J. 539, 570 (1958). McDougal and Burke, The Community Interest in a Narrow Territorial Sea: Inclusive Versus Exclusive Competence Over the Oceans, 45 Cornell L.Q. 171, 253 (1960).

The convening of four major conferences on this subject during the last half century emphasizes the difficulty encountered in balancing exclusive claims against inclusive uses. Since the Seventeenth Century determination of the proper width for the adjacent area of national sovereignty has been an important subject of discussion between nations. The United States initiated the claim to a three mile territorial sea, and in the Fishing Convention of 1818 between the United States and England this limit was codified by treaty. Because of English naval

hegemony during the Nineteenth Century the three mile limit gained almost universal acceptance and was generally recognized prior to the 1927 twelve mile decree by the U.S.S.R. While this limit was sought to be codified by Britain in the 1930 Hague Codification Conference, the failure to discuss the possibility of a contiguous zone scuttled the Conference. After the Second Law of the Sea Conference a number of states have asserted exclusive claims over ever-larger portions of the oceans. While these claims have been asserted in varying forms, ranging from an assertion of fisheries jurisdiction to claims of territorial sovereign jurisdiction, the end result has been to establish a reservoir of raw materials which can be withheld from exploitation until the coastal state's economy sufficiently develops to employ the resources for itself. Unfortunately, such exclusive claims impinge upon inclusive use of the world oceans and result in reduction of world production because of inability to employ the multiplier effect. McDougal, The Law of the Seas in Time of Peace, 3 Denver J. Int'l. L. and Policy 45, 50 (1970).

Transit of straits symbolizes the central issue in the controversy between exclusive claims of coastal states and inclusive uses of the world ocean at the present time. International straits constitute narrow portions of the oceans where

ships must navigate in close proximity or within territorial seas in order to traverse from the high seas to other portions of the high seas or to the waters of a foreign state. Approximently 116 straits which now exist within the high seas regime will come within the territorial seas of coastal states if the territorial sea width becomes established at twelve miles. However, only sixteen of these international straits appear at present to be of major import to commercial traffic. Osgood, U.S. Security Interests in Ocean Law, 2 Ocean Development and Int'l. L.J. 1, 14 (1974). Continued application of the present rules to a twelve mile territorial sea will merely intensify competition for tactical advantages in straits where navigation now can be conducted with freedom. As submarines must continue to traverse straits, the necessity for surface transit should be eliminated. Vessels with the size, poor handling characteristics, inadequate lighting, and insufficient radar reflective capability, such as modern submarines, can only create hazardous situations for other surface traffic.

Unrestricted flow of commerce constitutes the best illustration of inclusive uses of the ocean. As nations cannot be entirely self-supporting, any program for increasing the living standard of mankind must include ocean transport of large quantities of goods. While merchant shipping must exhibit concern

for environmental protection, it should not be severely limited by legislation. No evidence indicates that the present use of innocent passage impairs maritime commerce, however the present regime of narrow territorial seas presupposes that vessels spend the majority of their time on the high seas and beyond those areas where nations may assert a jurisdiction. With the establishment of a twelve mile territorial sea limit and international recognition of coastal state jurisdiction over resources to a 200 mile limit the possibilities of conflict between coastal states and commerce increase.

Coastal states appear justifiably anxious regarding the problem of ship collisions. Despite modern technology, collisions involve one out of every fourteen ships each year. It seems preferable to deal with the situation primarily on a basis of collision avoidance rather than on the basis of navigation regulations founded upon responsibility. Due to the great variety in merchant ships some solutions center upon the theme of a vessel's damage-doing capacity. Warbick, The Regulation of Navigation, in 3 New Directions in the Law of the Sea 137, 140 (Churchill, Simmonds and Welch, eds., 1973). This allows states to concentrate on vessels such as very large crude carriers (VLCC) which have the potential to inflict the most harm. This functional approach appears to be the best procedure for coping

with operational problems of transit.

New developments in the law of the sea must adjust the inclusive and exclusive claims of nations while attempting to preserve the legitimate interest of all. Essential to navigation and international commerce is that the balance be uniform and consistent in order to provide predictability and stability of expectations and to avoid multiplicity of inconsistent regimes.

It is important to think of the territorial sea as a legal concept of jurisdiction and not a geographic term. Coastal states protect their interests in adjacent waters by asserting jurisdiction, in varying degrees, to prescribe and apply rules to foreign vessels in these waters. Discussions on the nature of the territorial sea revolve primarily around the breadth of the sea. While a very few states would seek to abolish the concept of the territorial sea and assert either total international control or exclusive national control with no international rights in the territorial sea, the overwhelming majority of states reject such proposals and favor retention of the traditional concept of a territorial sea as defined in Article 1 of the 1958 Convention on the Territorial Sea and Contiguous Zone. There is, however, great disparity in the proposals dealing with the breadth of the sea.

The language of all drafts submitted to the Third Conference on the Law of the Sea generally follows that of the earlier Convention. The chief differences concern the question of archipelagic waters, in particular whether these are to be regarded as internal waters or territorial seas and whether the archipelagic concept should be recognized at all. The only other issue, besides that of the breadth of the territorial sea, is whether the Philippine proposal on historic waters should be included within the definition of the territorial sea. This proposal would give coastal states sovereignty over historic waters "pertaining to a state by reason of an historic right or title." (A/CONF.62/C.2/L.24) This concept has not received wide support and should be rejected as opening a Pandora's box regarding claims to national jurisdiction.

The language of Articles 3 through 13 of the Convention on the Territorial Sea regarding limits, bays, baselines, etc. have received widespread support for retention except for the question of archipelagoes. These articles are included in the comprehensive drafts presented by the Geographically Disadvantaged Group (GDG), the Eastern European Group (U.S.S.R. bloc), as well as the very popular draft of the United Kingdom (UK). Alternative proposals would modify the language only very slightly. Aside from those who would allow states to establish

their own method of determining the baseline of the territorial sea, and this must be rejected as defeating one of the main purposes of the Conference, the largest proposed variation deals with baselines for those states which have extensive deltaic formations and alluvial deposits. Predicated upon the shifting nature of such coastlines this proposal would allow the baseline to be established at the ten fathom curve rather than at the mean low water line. While this proposal merits careful scrutiny by technical experts, it should be rejected in the absence of demonstration of a real need in view of the uncertainty which it generates and the potential for creeping claims of national jurisdiction.

As to the breadth of the territorial sea, of the sixty-four nations addressing the subject at the Second Conference on the Law of the Sea at Caracas, thirty one took no ascertainable position at all, twenty four supported a breadth of twelve miles, seven supported a breadth of 200 miles, and others supported varying distances ranging from fifty miles to 130 miles. The chief proponents of the 200 mile territorial sea are the developing nations of Africa and Latin America. Their chief reasons for supporting such claims appear to be concern over resources in coastal waters and national security. The former interest seems to be taken care of by the proposed economic

resource zone of 200 miles, and the latter interest will probably not be widely recognized at the Second Session of the Conference. Despite intensity in the debate, there appears to be widespread consensus that the breadth of the territorial sea will be twelve miles for all states. Language to the effect that "each state shall have the right to establish the breadth of its territorial sea up to a distance not exceeding twelve miles" enjoys widespread support.

Another major issue is the question of passage through the territorial sea and through international straits. While at earlier conferences these questions have been regarded as one and the same, at Caracas they have been separated for the first time and made subject to separate proposed regimes. These proposals range from the extremes of no right of passage (Albania) innocent passage for all except warships (China, Peru, Republic of Korea), innocent passage for all with further definition of what is innocent passage and what is not (UK, et al.), and retention of the standards from the Convention on the Territorial Sea (U.S.S.R., Denmark). In view of the large support enjoyed by the UK draft and variations thereof, it appears likely that there will be recognized innocent passage for all ships through the coastal state territorial seas in a manner similar to that provided by the existing Convention. The chief difference will

be further definition of the rights and duties of the coastal state and of transiting vessels.

There are also proposals for the exercise of coastal state jurisdiction over the pattern of transit. It is interesting to note widespread support for the use of sealanes, navigational safety regulations, and traffic separation schemes. Such measures are essential in narrow areas of the ocean not only to preserve life and property but to prevent traumatic pollution. Proposals regarding these measures are essentially similar, those of the UK being particularly clear and succinct. The UK proposal also specifically limits the jurisdiction of the coastal state regarding regulations as to design, construction, etc. of vessels, relying instead on promulgation of international standards, for the purpose of uniformity, with an implied right of application by coastal states. Oman proposes special articles on sealanes and on ships with special characteristics (nuclear powered, super-tankers, dangerous cargoes) whereby notice may be required and special sealanes set up for their passage. Such requirements seem reasonable enough upon their face and worthy of consideration as a possible compromise between the interests of coastal states in environmental protection and the interests of ships transiting in passage. Articles 18, 19 and 20 of the Convention on the Territorial Sea are

retained by all drafts with respect to civil and criminal jurisdiction of the coastal state over vessels in passage.

The biggest conflict concerning passage through the territorial sea continues to concern passage of warships, including submarines. It is interesting to note that almost all drafts (including the UK, U.S.S.R. drafts) retain the provision that submarines and other underwater vehicles navigate on the surface and show their flag in the territorial sea. Fiji, however, proposes an interesting compromise which may have application elsewhere, in that it would retain the surface navigation requirement except that submerged passage would be allowed through designated submarine sealanes after notice.

The definition of warships and their immunities will be continued from the earlier Convention. Dispute exists over whether warships are: (1) entitled to innocent passage on the same basis as other vessels; (2) must give the coastal state notice of their passage; or (3) may be required to seek authorization of their passage from the coastal state. The first two alternatives are antithetical and states on each side appear to be firm in their positions. The second alternative would seem to be an acceptable compromise if coupled with the requirement that the coastal state establish expeditious notification procedures, with no unreasonably long minimum notice requirement

and specifying that lack of notice shall be considered a wrong against the coastal state but with recognition that lack of notice shall not deprive otherwise innocent passage of its character and not result in denial of passage unless an element of a recurring pattern of failure to give notice exists. Due regard for the security requirements of the transiting state's ships should also be recognized, and the contents of the notice message should be limited that reasonably required by the coastal state.

States participating in the Conference are closer to agreement than might otherwise be supposed. On the issue of the territorial sea much depends on progress in other areas of negotiation, however, the new convention will no doubt bear great resemblance to the Convention on the Territorial Sea with definition of a twelve mile sea limit and recognition of rights of passage for all ships subject to: (1) extensive prohibitions on the conduct of transiting vessels; (2) broadened jurisdiction of the coastal state to regulate; and (3) notification and special ceilings for warships, submarines, super-tankers, and nuclear and hazardous cargo vessels. On the question of passage through international straits issues presented to the Conference have been hotly contested. Straits have a variety of geographic and political circumstances which make it difficult to arrive at

solutions equally suitable for all. A variety of solutions has been proposed: (1) retaining the present regime of innocent passage through straits; (2) modifying the definition of innocent passage; (3) recognizing a right of free transit; (4) recognizing a right of transit passage; (5) recognizing a right of unimpeded passage; and (6) recognizing no innocent passage rights at all.

A straits legal regime will be defined for those situations where the passage necessarily must occur through the territorial seas of a littoral state. It is important to note that in some straits, even those wider than twenty-four miles, passage necessarily must follow the navigable channel. The Conference may wish to provide for this situation. Other definitions include those straits used for international navigation, straits connecting one part of the high seas with another, and those straits connecting high seas areas or connecting to the territorial sea of a third state.

Chief alternatives for the regime of international straits are the right of transit, innocent passage (perhaps modified from the earlier Convention), or a consent regime controlled by the coastal state. The last alternative particularly in the case of warships which is its chief amplification, is completely unacceptable to the major maritime and naval powers. Such states are also opposed to redefinition of innocent passage, as this may

lead to loss of passage based on spurious grounds and the ambiguous or uncertain definition of innocent passage. The right of transit, therefore, while initially stated to be a compromise by the major powers, and something less than innocent passage, is in fact the demand for greater rights than exist at present. It is believed, however, that as every nation has a stake in freedom of navigation, the balancing of the interests of straits states and the interests of other nations for free navigation can be achieved at the Conference.

The coastal state interest in straits passage is frequently greater than in passage through the territorial sea, as often such passage is not merely along its coasts but through the very heart of the state. Provisions regarding prohibitions on transiting vessels, and the rights and duties of coastal states, should therefore be retained in the straits regime. On the other hand, the interest of the transiting vessel is also greater, since denial of passage through the territorial sea can at most take a vessel out ot its way a distance equal to the change in course necessary to avoid the territorial sea. Denial of passage through a strait, however, can take a ship hundreds or thousands of miles out of its way and cost many days in transit. A balancing of such interests would seem to dictate a regime virtually identical to that of passage through the territorial sea, but

subject to the condition that passage can be denied execpt under the most extreme circumstances (such as an act of war). And the coastal state may exercise navigational and safety control even perhaps in areas beyond the territorial sea.

The right of the coastal state to protect the marine environment and to promote the safety of navigation must be recognized in straits. However, international uniformity in these matters is necessary to prevent burdensome multiplicity of regulation. Articles 3, 4 and 5 of the UK draft, which called for international adoption of uniform standards to be enforced by the coastal state as well as by the flag state, are suited to this end.

The right of straits navigation is limited to that which is direct and connected with passage (that is, no stopping or hovering). Provisions are included calling, in varying degrees, for transiting vessels to observe international rules for the prevention of collisions, pollution, and navigation regulations. The territorial sea regime, with substitution of the right of straits navigation for innocent passage, might be employed for submarines. The most reasonable compromise would be to require surface navigation for safety reasons in shallow straits and submerged passage in designated sealanes for the same reason in deep straits.

While no draft has been proposed on the subject of an international authority to establish regulations for straits navigation, there appears to be great merit in establishing such a body. Sovereignty would be retained by the straits states, and an international body could promulgate uniform regulations and standards. There appears to be a need for such uniform international standards and procedures for navigational safety systems, traffic separation schemes, the designation of sealanes, and determination of which straits are too shallow for safe submerged passage by submarines, etc. Another major role of such an authority could be dispute settlement. With an issue such as passage through international straits multiple disputes are bound to arise regardless of the nature of the passage regime which is adopted. The governing body of an authority would consist of equal numbers of representatives from the littoral states and from the prime users (not including littoral states) of the strait. The prime users would initially be determined from historical patterns and later from data compiled by the international body. Such a body could also provide technical and financial assistance to the littoral states regarding navigational systems. A suitable name for such a body might be the International Commission on Navigation (ICNAV). If the littoral states choose, they organize a commission from

this body for their own strait, and regulations regarding the strait would be made thereby. If they do not so choose, disputes over the use of the strait would be settled by the parent ICNAV governing body. If such a strait commission were formed but dissension arose, any of the member states also has the option of bringing the question before ICNAV for a binding determination.

The most prominent function of ICNAV involves the dispute settlement competence of a Navigation Council. Although this Council devotes primary concern to the regime of straits, it can also operate to determine the designation and use of shipping lanes and other disputes which may arise regarding archipelagic waters. In resolving such conflicts it would employ the same techniques used for strait determination.

This proposal contemplates that the Navigation Council would be primarily involved in determinations regarding proper channel size and disputes between inclusive uses and exclusive demands. Following the determination of all seabed and territorial sea boundaries between the adjacent states, a channel width will be established along the median boundary. Obviously one must consider the location of the navigation channel in this determination. The width will be determined in accordance with the distance required by an adequate traffic separation scheme

and the unique characteristics of the particular strait.

As previously indicated, the adjacent states possess competentence over straits subject to ICNAV determinations in cases involving dispute between the adjacent states or charges of arbitrariness made by a user state. In the event of such a problem the hearing before the Navigation Council must take cognizance of the applicable international standards, the geographic location of the strait, the time period involved, the needs of the parties, and other pertinent facts when it makes its decision. Prior to the acquisition of its own statistics and information the Navigation Council must give great weight to historic uses. An organization such as ICNAV appears to present an adequate compromise on the conflict between inclusive uses and exclusive claims to international straits and archipelagic waters.

As to the contiguous zone, there appears to be widespread feeling that need for a contiguous zone will be removed by expansion of the territorial sea to twelve miles and the creation of a 200 mile economic resource zone. This is reflected by the dearth of draft proposals on the subject. Yet when one considers that many nations would seek to take advantage of a contiguous zone concept of jurisdiction in the economic resource zone the resource zone jurisdiction does not appear to be a good

replacement for the contiguous zone. Examination of the historic basis for asserting contiguous zone jurisdiction reveals a propensity on the part of many nations to assert limited exclusive claims beyond the limits of the sovereign area, no matter what those limits may be. It appears probable, therefore, that states may seek to extent limited exclusive claims beyond even a twelve mile territorial sea. In the absence of a defined and limited belt of contiguous zone jurisdiction an obvious possible course of action will be for states to assert contiguous zone jurisdiction in the economic resource zone.

A possible alternative to such creeping jurisdiction would be definition of a contiguous zone beyond the territorial sea, but less extensive than the economic resource zone. Careful drafting can define the limits and scope of contiguous zone jurisdiction and limit it to a prescribed narrow area. At least one country (India) already has proposed a contiguous zone of eighteen miles, or six miles beyond the territorial sea of twelve miles.

A possible supplementary or alternative provision, designed to meet states' needs for limited protective jurisdiction, and which would prevent creeping jurisdiction, would track the language of the U.S. Anti-Smuggling Act of 1935 (19 U.S.C., Sec. 1701) allowing coastal states, upon declaration of need to

exercise such limited protective jurisdiction, to declare special contiguous areas of up to 100 miles in width and 50 miles from the coastline for a maximum of six months. Such declarations would be reviewable by the ICNAV Council and would be authorized only in narrowly prescribed circumstances.

Turning to the high seas, the chief areas of discussion regarding the regime of the high seas have been the extent of the coastal state economic resource zone jurisdiction and various attacks on the doctrine of exclusive flag state jurisdiction over ships. States seeking expansive jurisdiction in the economic resource zone, aside from those wishing to treat it as a territorial sea, wish to regulate navigation and to prevent interference with resource-related activities. Other countries wish to retain full freedom of the seas in the economic resource zone and to impose duties on the coastal state not to interfere with navigation through resource-related activities. The discussions are further complicated by assertions to exercise pollution jurisdiction so as to protect fisheries.

Examining the proposals submitted by developing states, the thrust is to make the rights of foreign ships in the economic resource zone subject to coastal state jurisdiction. Proper high seas would not, therefore, begin until outside of

the economic resource zone, which is expected to be 200 miles in breadth. Maritime nations would not accept such proposals. This is particularly obvious when one considers that major portions of international shipping lanes would thereby become subject to coastal state jurisdiction. The most reasonable alternative would seem to be to allow full high seas freedoms and to impose on both coastal and flag states the duty of no unreasonable interference with the reasonable uses of the other. Vessel pollution in the economic resource zone would be liable in damages to the coastal state.

Widespread dissatisfaction with the licensing and inspection practices of certain flag of convenience nations has resulted in pressure to force those nations to exercise more effective control over their ships. Such states can be expected to resist measures which would deprive them of their status, but they can be expected to accept measures requiring effective control. Such measures may be interpreted as an essential element of a "genuine link." These states can delegate their administrative responsibilities to another state or to a public or private international inspection body. They could be encouraged to do this by provision that, if they do not exercise effective control, the flag state incurs liability on the basis of its failure to exercise control over its ships.

Other proposals before the Conference deserve comment. A proposal for establishment of universal jurisdiction for illicit traffic in drugs on ships of less than 500 tons should be rejected as offering too many possibilities for unwarranted interference with passage. A proposal to allow coastal state protective jurisdiction to prevent unauthorized "pirate broadcasting" appears reasonable to deal with this limited but serious problem. As to the question of archipelagoes major differences are apparent. There is diversity of opinion as to whether the doctrine should apply to archipelagic states alone, or to states which are continental but have archipelagoes near, or at some distance off, their coasts. The former is more appropriate, as the special considerations underlying the doctrine apply most strongly in that case. As to the question of the nature of the states rights in the new "archipelagic waters" and the rights of foreign ships in passage, it appears that such waters will offer some more restrictions than high seas areas, but will not offer the same degree of coastal state control as internal waters. A solution would be to include these waters, which are often also major shipping routes, in the definition of international straits. Another would be to introduce a new concept of "zone of archipelagic waters" with specified rights and duties on the part of both transiting ships and the archipelagic state.

Other important questions concern the permissible length of baselines used to enclose archipelagic waters, the ratio of land to water which is permissible, and what are the necessary qualifications for such a state. Such determinations are relatively mechanical once the concept itself is accepted. As long as navigation interests are adequately protected these determinations are not particularly critical to the world community.

Basic decisions of policy made regarding navigation must be made by the Second Session of the Third Conference on the Law of the Sea. Good, workable drafts for each of the alternative regimes have been put forward. While unyielding persistence in the stated positions will prevent progress in the Conference, recognition by states of the legitimate interests of others should permit resolution of all the questions concerning navigation. This will require recognition of the legitimate interests in security and environment possessed by coastal states, and also recognition of legitimate interests in security and commerce on the part of states which possess strong navigational interests.

The most logical regime for straits would not differ markedly from that of the territorial sea. While it is expected that transiting ships would have a long list of duties and prohibitions, coastal states would have limited authority to

regulate and establish procedures. International standards for straits navigation should be promulgated, primarily for the purpose of maritime safety and for protection of the marine environment. Appropriate and reasonable notification procedures can be established, particularly for warships and special category ships.

Important will be the determination of consequences resulting from violation by the transiting ships. In the territorial sea the violating ship could be required to leave the territorial sea, thus losing passage rights. In international straits, passage should not be interrupted absent some grievous violation such as an act of war, and violations would result in actionable wrong for which the shipowners and, if it is responsible for the wrong, the flag state would be liable. Such a regime could allow not only the recovery of actual damages but also punitive damages where these are appropriate in accordance with a previously determined international uniform standard.

II - FISHERIES AND LIVING RESOURCE EXPLOITATION

Based upon the proposals submitted to the Conference it does not appear overly optimistic to conclude that there is considerable agreement among states on most major fisheries issues, and that prospects for successful agreement on this subject at Geneva are good. Many policies on this subject have received almost unanimous acceptance and leave but minor details to be agreed upon in the final negotiations. Some others merely require choice from among several meritorious proposals.

Briefly, some of the important principles upon which most proposals agree are the following: (1) continued exclusive coastal state sovereignty over living resources in the territorial sea; (2) a 200 mile zone of coastal state jurisdiction over most species of living resources in the high seas; (3) an international duty both to conserve and to utilize the food resources of the oceans (with the economic goal of maximum sustainable yield for the purpose of maximizing food for human consumption serving as the accepted proper balance between these two duties); (4) developing coastal states will be assured preferential status in the 200 mile jurisdictional zones for exploitation of all living resources with the possible exception of anadromous and highly migratory species; (5) landlocked and other geographically disadvantaged states will be provided equitable access to fisheries

and equitable rights to exploitation; (6) international and regional organizations will continue to play an important role in all aspects of fisheries management, expecially in the high seas area; (7) coastal states will be primarily responsible for enforcement measures within the 200-mile zone, with retention of responsibility by the flag state for adjudication and punishment of offenses committed by its ships; and (8) international machinery will be provided, probably similar to that in the Convention on Fisheries and Conservation, for the pacific settlement of disputes between states regarding the high seas areas.

Differences exist to some extent in all the above categories. These will now be discussed in somewhat more detail than the areas of agreement.

Although some of the earlier proposals rejected the idea of exclusive coastal state jurisdiction beyond a 12-mile territorial sea, there seems to be widespread acceptance now of the principle of exclusive coastal state jurisdiction over living resources (with the possible exception of highly migratory and anadromous species) in a 200-mile zone measured from the same baselines as its territorial sea. This zone has been given at least ten proposed names, but nomenclature is certainly not an important issue. "Economic resource zone" was chosen in

this draft simply because it seemed to be the name upon which the most proposals agreed.

The scope of coastal state jurisdiction in the economic resource zone is, however, still open to some debate. Current proposals range from a 200-mile territorial sea advocated by several countries to the two-tiered approach for developing and developed countries offered by Japan. The primary effect of the differences is, as would be expected, upon allocation of fishery resources.

The 200-mile territorial sea proposals were rejected for the following reasons: (1) they provide no more rights over living resources for the coastal state than it would enjoy in an exclusive economic resource zone, that is they would confer greater jurisdiction upon the coastal state than is necessary for the proper management of living resources; (2) such extensive coastal state jurisdiction might operate to the detriment of important rights of other states, such as navigation; and (3) many regional arrangements, especially conservation measures, might be prejudiced because they do not operate in the territorial sea. On the other hand, the two-tiered approach was not adopted because of the lack of effective criteria for determining what is a developing and what is a developed state, and the provisions for developed states would encourage them to set

maximum sustainable yield levels lower than they actually should be so as to decrease competition and thereby increase the catch per unit effort of their "locally conducted small-scale coastal fisheries," especially since such states would, in effect, be forced to give away rights to the remainder of the fish in their economic resource zones.

Much of the remaining difference of opinion seems to be over the fees the coastal state may charge for rights to exploit fish beyond national harvesting capacity in the economic resource zone. The range seems to be from mere license fees, which presumably would cover only the coastal state's expenses of administering the management of the fishery, to fees that would represent the value of the fish sold. This draft supports the latter system for the following reasons: (1) it would provide greater benefit to developing coastal states with limited fishing technology, putting them on the same footing in regard to economic benefits as coastal states with highly developed fishing capabilities; (2) it would provide economic impetus for the coastal state to maintain true maximum sustainable yields as it would maximize its economic benefits over the long term by so doing, regardless whether it utilized or sold its harvest rights. This would eliminate most of the need for any kind of policing setup to assure that the coastal state is in fact setting catch

levels designed to maintain MSY. The true economic value of the harvest rights could presumably be obtained by auctioning them off on a nondiscriminatory basis.

Finally, although there is general agreement on the rights of landlocked and geographically disadvantaged developing states to fish in the zones of the adjacent coastal states, there is some difference of opinion over the transferability of these rights to third parties. Some proposals would allow no transferability at all, while others would allow limited transferability under cooperative and joint-venture type arrangements. This draft reflects the view that the matter is properly left to the judgment of the coastal state. If the right is granted in terms of permissible catch levels, there should be no objection by the coastal state to free transferability of the rights. Transfers in this instance would work no harm to the coastal state, and would allow the disadvantaged state to obtain maximum economic benefit from its right.

Proposals regarding highly migratory and anadromous species manifest significant differences. These vary from exclusive coastal state jurisdiction over these species in its economic resource zone (and beyond for anadromous species that spawn in its territorial waters) to no special rights whatsoever with regard to either class of species.

For highly migratory species, it is believed that management responsibility is best left to international and regional organizations in which all interested parties participate equally. These groups have shown the greatest success in the past for the management of particular highly migratory species, and are really the only realistic way of efficiently and equitably managing migratory species exploited by several or many nations. It is believed that the coastal state should have preferential rights to the exploitation of these species within its economic resource zone just as for any other species, subject to conservation measures issued by the regional or international authority. A necessary corollary to proper management by such authorities would be the power to allocate relative catch quotas within the economic resource zones of the various nations exploiting the particular species, a power missing from most existing management arrangements.

For anadromous species it is believed that the considerable expense that must be borne by coastal states to maintain spawning grounds should entitle them to exclusive rights to manage and exploit the particular stock. Principles of equity and economics support such a view. Other states could be allowed to exploit such species, especially in areas of the high seas, with the permission of and subject to the conditions

imposed by the coastal state.

As to enforcement measures and dispute settlement, there is general agreement that enforcement is left to the coastal state in the economic resource zone and to international and regional authorities in areas where they exercise authority. Some proposals take the view that adjudication competence should reside solely in the coastal state for the economic resource zone. This view cannot be accepted as realistic, as it would allow states unilaterally to promulgate and enforce their own measures, then adjudicate the validity of such measures and make findings of fact subject to no special procedures for review. Such a system would not be in accord with fundamental principles of justice and due regard for the rights of other states. This draft supports the position of providing an impartial tribunal for the ajudication of such matters, with opportunities for adequate representation of the interests of both parties to the dispute.

The final area of significant difference of opinion is whether dispute settlement should be compulsory and binding on the parties. There is apparently some feeling that it should not be. The only justification for such a view is that the states opposing compulsory and binding procedures believe that their own self-interest can better be served by taking

unilateral action when their position appears weak rather than submitting to an arbitral procedure. Such a view cannot be justified to the international community and certainly does not contribute to peace and good harmony among nations. It is believed that the procedure incorporated in this draft, modelled largely after that provided in the Convention on Fishing and Conservation, is the most equitable arrangement possible and in the interest of the world community.

III - THE ECONOMIC RESOURCE ZONE: COASTAL STATE SEABED JURISDICTION

Since the emergence of the continental shelf jurisdiction of coastal states and its codification in the Convention on the Continental Shelf, concern has been expressed regarding the uncertainty of its seaward extent. While it appeared reasonable in 1958 to accept as the limit the 200 meter isobath "or beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resource of the area," advancing technology and the quest for minerals and oil and gas have combined to make exploitation at depths greater than 200 meters a reality. Other problems exist regarding the shelf, but these have been as important as the major question of allocation of the seabed between coastal states on the one hand, and the international community on the other. Principles governing lateral continental shelf boundaries between adjacent coastal states have been declared by the International Court of Justice in the North Sea Continental Shelf Case for those states which have not subscribed to the median line rule of the Convention on the Continental Shelf. Issues and problems regarding coastal state jurisdiction over research conducted in areas above the shelf are discussed below in the separate section on marine scientific research.

Recognizing that there is widespread agreement on fixing the territorial sea limit as 12 miles, the issue for seabed resource jurisdiction is the determination (according to depth or distance) of an additional zone. As noted above, many names have been proposed, and this draft uses "economic resource zone." For both fisheries jurisdiction of coastal states and their jurisdiction over living and nonliving resources of the seabed this zone will have a breadth of 200 miles as measured from the baseline used to measure the territorial sea.

The U.S. proposal, parallel to the definition in the Convention on the Continental Shelf, recognizes exclusive sovereign rights for the purpose of exploring and exploiting the natural resources, whether renewable or nonrenewable, of the seabed and subsoil. Coastal states further would have exclusive rights to regulate construction of artificial islands and installations which might interfere with economic interests in the resources of the area. The right to establish limited safety zones around installations is recognized.

The Kenya draft articles propose a zone the seaward limits of which would be based upon the exploitability criterion of the present law of the continental shelf. As technology has advanced to the point where, in the near future, deep areas of the ocean will be susceptible of exploitation this proposal

does not appear to be a viable solution.

On the issue of whether a new convention on the law of the sea would recognize both a 200 mile economic resource zone and a further extension of continental shelf jurisdiction beyond the 200 mile limit this draft takes the position that the economic resource zone will replace the continental shelf and that no provision should be made for the latter. The U.S. and Canada (and others) proposed recognition of a continental shelf jurisdiction beyond the 200 mile limit to the continental margin or natural prolongation of the land. Considering that there are few areas in the world where the submerged continent extends beyond 200 miles from the coast, and regarding that definite and uniform marine jurisdiction limits are highly desirable, it is proposed that coastal state seabed resource jurisdiction be limited to the 200 mile zone. Other considerations which should be taken into account include: parallel limits for fisheries jurisdiction, the history of problems of "creeping jurisdiction" arising from the continental shelf and particularly interfering with the conduct of marine scientific research, and the desirability of not diminishing even further the international area of the seabed where exploitation will produce common benefits.

The same difficulties in defining "sedentary" species

of living resources exist as in the history of continental shelf jurisdiction. Means for resolving these problems are offered in the articles dealing with fisheries and living resource exploitation.

Although there is widespread agreement on a 200 mile economic resource zone, there is somewhat less agreement that coastal states should have exclusive jurisdiction over the seabed resources in the zone. A number of land-locked states desire to participate in the benefits from exploitation in these areas. In view of the trend towards wider zones of exclusive jurisdiction, the limited number of land-locked states, and the difficulty in finding a formula which would equitably solve the allocation problem for different types of resources and differing geographic areas, it is believed that coastal state jurisdiction in the zone will be exclusive.

IV - THE SEABED AND OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

The possibility that riches from the exploitation of deep ocean resources could lead to great benefits for mankind captured the attention of states when Ambassador Pardo of Malta addressed the U.N. General Assembly in 1966. The figure of $6 billion dollars a year was mentioned. From 1967 extensive committee discussion, and debate in the General Assembly, exhaustively probed this subject. Indeed it can be said that, although there were other important questions to be resolved in the law of the sea, this was the topic which prompted the current law of the sea negotiations. And at the session of the Conference held in Caracas the proposals and documents of the First Committee, which considered only this subject, were almost as voluminous as the papers on all other subjects combined.

While there were no prior conventions upon which the U.N. Seabed Committee could rely in its deliberations, several resolutions of the General Assembly dealt with matters of deep ocean exploitation: Resolution 2574 in December, 1969, the "Moratorium Resolution," declared that all states and persons were bound to refrain from exploitation of the seabed and ocean floor beyond the limits of national jurisdiction and that claims to portions of the area or to its resources would not

be recognized; Resolution 2750 (XXV) in December, 1970, reaffirmed reservation of these areas exclusively for peaceful purposes and for use in the interests of mankind; and Resolution 2749 (XXV) in December, 1970, enumerated general principles to govern uses of the area. These included the concepts that the seabed and ocean floor beyond the limits of national jurisdiction are the "common heritage of mankind," and that no state may assert sovereignty or sovereign rights in the area.

The "common heritage" area of the seabed is, however, today much less valuable than was believed in 1970. Three important facts can be noted:

(1) First, commercial exploitation has not yet begun in the deep seabed. While uncertainty as to the details of the future legal regime for the area has perhaps been a factor, commercial production from the seabed in depths greater than the 200 meter isobath limit of the continental shelf is not yet significant on a world scale. Indeed it seems clear that it will be a number of years before dreams of vast riches from the deep seabed will be realized;

(2) Second, widespread agreement at the Caracas Conference in 1974 that coastal states would possess a 200 mile economic resource zone greatly reduces the size of the international seabed area and, most importantly, excludes from this

area the valuable continental-type resources such as oil and gas; and

(3) Third, deep seabed resources, such as manganese nodules, can be found in the deep areas of coastal states' economic resource zones. Any international seabed regime thus will have to be competitive in costs, terms, and conditions with alternative sites for exploitation within national economic resource zones.

A document of alternative draft articles prepared by the Seabed Committee served as the basis for discussion at the Caracas Conference. The 21 draft articles which it included encompassed all the major issues except the question of rules and regulations for deep seabed mining. From this starting point, discussion focused mainly on three key unresolved issues: (a) the system of exploration and exploitation (referred to as "who may exploit the area"); (b) the conditions for exploration and exploitation; and (c) the economic implications of seabed mining, particularly the effects on those states currently exporting the metals which will be mined from the seabed.

As to the question of "who may exploit," there was sharp disagreement on the four alternative drafts presented. Basically, these differences are on the issue of whether an international authority to be established for the area would issue

licenses for exploration and exploitation, or would exercise monopoly power and from the outset, or at some time in the future, itself engage in development of the seabed resources.

Deeply entwined with the issue of who may exploit is the question of the conditions for exploration and exploitation. The U.S. position was that terms and conditions be included within the treaty on the law of the sea, or in a protocol, so as to guarantee the security of exploitation necessary to attract investments, while the Group of 77 favored granting substantial discretion to the international authority to make and modify rules and regulations. While the schism between the developed and developing countries has narrowed, fundamental differences still exist on this subject. Possibly the most plausible solution is a compromise whereby only the basic conditions of exploration and exploitation are included in the treaty, forming a foundation for later refinement and amendments, with establishment of a Rules and Recommended Practices Commission to promulgate supplementary regulations. This Commission could have a structure similar to the International Civil Aviation Organization. This alternative should prove to be sufficiently flexible to meet new problems as they arise, while at the same time providing adequate security to encourage investments.

Proposals submitted to deal with the economic implications of mining the international seabed area also reflected major differences between the developed and developing states. The wide range of discussion cannot be summarized in the space available here. Compensatory and preventive schemes to deal with the problems generated for raw material exporting countries by deep seabed mining raise questions of an economic, social and political nature. The approach which was chosen in this draft was establishment of an Economic Planning Commission to study such problems as they arise and to make recommendations, and a Tribunal for dispute settlement.

V - MARINE SCIENTIFIC RESEARCH AND THE DEVELOPMENT AND TRANSFER OF TECHNOLOGY

Under present law prior consent by the coastal state is required for the conduct of marine scientific research (hereinafter referred to as research) in the internal waters and territorial sea, and for research on the high seas which relates to the continental shelf. The claims of some states to broad territorial sea areas and to fishing zones in which research is considered to be under the coastal state's exclusive control are well known. Because of these claims to wide areas of control, and because of the provisions regarding the continental shelf, marine scientists have in recent years experienced great difficulties in attempting to conduct research.

Pursuant to Article 5 of the Convention on the Continental Shelf the provision that the coastal state "shall not normally withhold its consent" is undercut by difficult questions such as: whether the research relates to the continental shelf (or merely to the high seas waters above), what is a qualified institution, what is purely scientific research, and who is to define these terms. In effect, much potentially valuable research, which could lead to benefits for all mankind, must today be conducted beyond continental areas or not at all.

Committee III of the Conference was able to obtain agreement on certain general principles which were embodied in three

articles, the texts of which were agreed in informal meetings. These are: (1) that states shall endeavor to promote and facilitate research not only for their benefit but also for the benefit of the world community; (2) that research shall be conducted exclusively for peaceful purposes, not interfere unduly with other legitimate uses of the sea, and shall comply with environmental protection regulations; (3) and that research shall not form a legal basis for claims to any part of the marine environment or its resources.

Underlying these principles is the problem generated by definition of research. Proposals have ranged from including studies related to the marine environment and not directly aimed at industrial exploration or exploitation, to studies which simply increase the knowledge of mankind. It seems unjustifiable that the dichotomy between pure and applied scientific research, reflected in such terms as "fundamental research" and "purely scientific research," should persist in terms excluding industrial exploration and exploitation of natural resources from research. A purpose test appears to be ambiguous also.

Underlying the concept of the common heritage of mankind and that of the freedom of all states to conduct research is the assumption that all states can participate. This assumption is unjustified, as the majority of research capability, and the

necessary capital and technology, is concentrated in the few developed countries. A number of the draft articles submitted at the Conference refer to international and regional cooperation for research, including the exchange and publication of scientific data. Such proposals envisage general promotion of international cooperation in research, and a system of treaties and agreements to establish favorable conditions for such research. Other proposals relate to the transfer of technology and provide for regional centers for advanced training in research, the availability of technology and equipment, etc. It can only be hoped that the decision will be made in consideration of the overall benefit to mankind.

Committee III produced four alternative texts dealing with the consent required to conduct research in waters under coastal state jurisdiction and adjacent high seas areas. The Group of 77 proposed that prior coastal state consent must be obtained to conduct research in the territorial sea economic resource zone, and that consent is also required for the use of ocean data acquisition systems (ODAS) and satellites. This proposal further would require that research in the international seabed area would be conducted directly by an international authority or under its direct regulation and control. Criteria were also proposed to determine the nature of research which

would be proposed for coastal state consent and the information which would be supplied in making application. An alternative, proposed by Canada and Australia, is roughly similar to Article 5 of the Convention on the Continental Shelf. It provides that consent is required for research conducted in the economic resource zone and that coastal state consent shall not normally be withheld. The U.S. proposal would require consent only for research in the coastal state's territorial sea areas, however research outside such areas would be conducted with regard for coastal states rights and upon adequate notice to the coastal state with its right to participate and receive data, on the understanding that scientific research results will be published. The final alternative, which reflects the position of the U.S.S.R., UK, France, Denmark, Switzerland, and other states, is less explicit than the preceding alternative. It recognizes that coastal state consent must be obtained for research conducted in the territorial sea, and provides for total freedom to conduct research in the economic resource zone (except for research aimed directly at the exploration or exploitation of the resources of the zone).

Other proposals were submitted regarding the legal status of installations for research. These would provide that installations on the continental shelf or located within areas of

coastal state jurisdiction require authorization by the coastal state and are subject to its jurisdiction, and installations located beyond coastal state jurisdiction would be operated in accordance with an international regime to be established by the Convention. Among the provisions are rules that such installations shall not have the status of islands nor possess their own territorial sea, nor would they affect delimitation of the territorial sea, continental shelf, or economic resource zone of the coastal state.

Additional proposals were submitted providing for liability for damage to the marine environment arising out of research. It has been proposed that the flag state should be responsible either in any event, or in those cases where the damage is attributable to the state.

Considering the divergence of the positions of states presented to the Conference one tends to lose sight of the primary objective of research. While one cannot discount the fact that research is conducted sometimes either directly or indirectly for military or economic purposes, the vast majority of research is conducted by scientists who study the oceans for sources of food, minerals, petroleum, improved forecasting of weather conditions, protection of the marine environment and its ecosystems, and for various other scientific interests.

Restrictions on research in recent years has been based on grounds of national security, military, or economic interests. The several coastal states which have claimed sovereignty to a wide 200 mile area have caused serious impairment on the conduct of research.

Three of the proposed sets of draft articles explicitly provide for participation by the coastal state in the research project. This is a solid foundation from which to allay any fears or suspicions that coastal states may entertain regarding research. Participation, both in the planning stage of the research and in its operation, will enable the coastal state to know the objectives from the beginning, to provide some input to shape these objectives, and to obtain benefit from the project. Further, scientists of coastal states could during the period of planning research obtain necessary additional training to ensure maximum scientific benefit. Such a regime as this, however, assumes that consent of the coastal state will be sought and given well in advance of the conduct of research. It also requires and tends to ensure that the coastal state will reply, if necessary, without undue delay.

While some states have required transfer to them of primary data observations and of samples which have been taken, it is difficult to understand why coastal states would choose to

exercise proprietary rights over these. Agreement on these matters should be worked out in advance between the scientists of the flag state and the coastal state so as to avoid problems which may arise later. Furthermore, if research is to be for the benefit of all mankind the coastal state should not have the power to restrict publication of the result derived therefrom.

Present problems regarding demands of some coastal states for the exact times and precise geographic location of research ships can be avoided with the proper application of a consent regime. It is obvious that scientists engaged in research are subject to many limitations imposed by problems of the ship, such as equipment failures and other circumstances beyond their control. With coastal state consent and participation there appears to be no justification for such inflexible requirements. A tenative description of the approximate time, area, and objectives should prove to be sufficient.

The paramount question yet to be resolved is the matter of definition of those areas for which coastal state consent is required and for what types of research. As indicated above, there are difficulties in distinguishing pure and fundamental research on the one hand and research aimed at exploration and exploitation of resources on the other. Other terms have been

proposed and it appears that, absent lengthy definition, they will prove to be equally ambiguous. However, if one expresses belief in the principles that scientific research is to be for peaceful purposes, is to benefit all mankind, and shall not form a legal basis for claims to resources or areas, the question of what type of research may be carried on seems to be superfluous. Coastal states, expecially developing nations, who are interested in natural resource exploration and exploitation can gain invaluable knowledge and technical expertise from this type of research. Research together with technical systems programs, and educational and management programs, could prove to be an economic advantage to the state. And the state would not be relinquishing its control over the resources involved. On the other hand, if the dichotomy in definition is retained, then it may be best to charge a specialized agency of the U.N., or the proposed international authority, with the problem of precise definition. This would provide uniformity for the benefit both of coastal states and marine scientists.

In view of the increase in the number of claims to exercise coastal state jurisdiction over greater maritime areas, and considering the fact that research (whether directed for this purpose or not) often yields information on resources, it is proposed that coastal state consent be required for all types

of research both in the territorial sea and in the economic resource zone. In the case of pure scientific research, as internationally defined, consent would not normally be withheld provided the applicant undertook to conduct the research in compliance with the general principles outlined above and insure the right of the coastal state to receive all the particulars of the project, its results, a share of the samples as agreed upon, interpretation of the results and any implications thereof, and other provisions as may be agreed in the particular case. Coastal state participation in the project from the planning stage is recognized. This participation should include technical and educational instruction if required. All other research would require the explicit consent of the coastal state. Also, neither type of research can be carried on when a ship is engaged merely in innocent passage.

VI - PREVENTION OF POLLUTION OF THE MARINE ENVIRONMENT

While states have the power to prevent marine pollution in areas under their sovereign jurisdiction and from ships flying their flag, there are relatively few international legal provisions prohibiting such pollution. Articles 24 and 25 of the Convention on the Territorial Sea, Article 5(7) of the Convention on the Continental Shelf, the International Convention On The Prevention Of Pollution Of The Sea By Oil, The International Convention Relating To Intervention In The High Seas In Cases Of Oil Pollution Casualties, The International Convention Of Civil Liability For Oil Pollution Damages, The International Convention On The Establishment Of An International Fund For Compensation For Oil Pollution And Damages, The Convention For The Prevention Of Marine Pollution By Dumping From Ships And Aircraft, The Convention On The Liability Of Operators Of Nuclear Ships, and The Treaty Banning Nuclear Weapon Tests In The Atmosphere, Outer Space And Underwater, provide for regulation of specified types of marine pollution. Additionally, certain treaties provide for international responsibilities for marine pollution: The Treaty Between the United States and Mexico Relating to the Utilization of the Waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Ft.

Quitman, Texas to the Gulf of Mexico (which allocates priority to uses and provides for sanitary measures), the Treaty Between the Netherlands and the Federal Republic of Germany Considering the Course of the Common Frontier, the Boundary Waters Real Property Situated Near the Frontier, Traffic Crossing the Frontier on Land and Via Inland Waters, and other Frontier Questions (under which commission may act to prevent excessive pollution from substantially impairing customary uses), and the Indus Waters Treaty concluded between India and Pakistan (which establishes priorities and some regulations of uses). As to customary international law it should be noted that despite widespread reference to the Trail Smelter Arbitration Case, there is no generally recognized customary rule of international law which prohibits use of the marine environment as a dumping or discharge area for waste from land-based sources. The Trail Smelter Case was based upon a bilateral treaty concluded between the United States and Canada, and the law utilized by the tribunal was not international law but almost exclusively law developed in the United States judicial precedents. Although the case of the Cantons of Soleure and Argona was cited, that case in turn used United States law in arriving at its conclusion, and could have been determined upon the principle stated by the Federal Court of Switzerland that one state cannot require another to take greater precautions to protect it from harm than it takes to in-

sulate itself from the same injury.

The third conference on the law of the sea received a draft proposal from 10 states led by Canada which elicited varying responses based primarily upon geographic locations of participating states. Those supporting a zonal approach (establishing a broad pollution control area beyond the present limits of national jurisdiction) are those states which believe (accurately or not) that their coasts possess certain vulnerable or unique characteristics making them peculiarly susceptible to specific pollution threats. These positions are opposed by other states, notably the landlocked and shelf-locked group of states. The Federal Republic of Germany voiced rejection of the zonal approach on the ground that the marine environment could be effectively protected only if the oceans were treated as an ecological unit, and with further reference to the fact that a zonal approach would result in any case in an ineffective control mechanism.

The recommended substance of a pollution enforcement zone varies from globally uniform standards with coastal state enforcement, to authorization for coastal states to use national legislation to fill the content of such zone. Zonal adherents are further splintered between those advocating a pollution control zone coextensive with the economic resource zone and those

who believe that such a zone should be separate from any economic zone. In addition, a regional approach gained support from states bordering on enclosed seas where pollution is likely to remain confined to specific geographic areas.

A closely related issue concerns the variable sources of pollution. Although land-based sources of pollution comprise the bulk of pollution of the marine environment, states have expressed understandable resistance to regulation of such pollution. Most drafts and recommendations on this subject have been extremely broad, merely requiring states to adhere to principles of preventing marine pollution. A realistic proposal voiced by Sweden was that states should adopt national legislation consistent with the basic principles of this Convention and, if they did not, pollution damage to other states would lead to liability. This approach codifies existing judicial law in many states, does not detract from national sovereignty, and yet prescribes incentives to comply with some international standards on pollution.

Nearly all proposals regarding marine pollution have dealt with reallocating responsibility for pollution control measures relative to vessel-source pollution among the flag, port, or coastal states. These range from a detailed, functional allocation among states of specific rights and obligations of inspection, enforcement, and liability, to more general statements

of policy imposing primary and secondary rights and obligations upon flag and other states. Consistant with the 1958 Conventions which placed heavy responsibility upon the flag state to prevent oil pollution by ships, there is a clear trend emerging to leave primary rights and responsibilities of the flag state, possibly even including flag state liability for damage and injury where it has failed to act to enforce regulations, supplemented with more extensive rights of coastal and port states that heretofore existed under the Convention on the Territorial Sea.

Some states give separate consideration to atmospheric-based pollution, although in reality this is generally a subset of the problems of the land-based pollution. Similarly, ocean dumping has received separate commentary even though it too is a subdivision of both land-based and vessel-source pollution.

Pollution from seabed exploitation within areas of national jurisdiction and beyond the area of national jurisdiction has been dealt with as a separate topic. While some states desire establishment of international standards for seabed exploration and exploitation, the list of common textual articles shows a high level of agreement on the principle that states may exercise sovereign rights to exploit their resources in accordance with their own environmental policies. Understandably this

is intimately linked to the zonal approach issue, and to the issue of whether the zone should extend to the outer limits of the economic resource zone.

In fashioning comprehensive provisions for dealing with marine pollution a number of problems and issues must be dealt with which were largely ignored in the First and Second Conferences on the Law of the Sea. On the premise that pollution can best be dealt with and controlled at its source, and keeping in mind the fact that nearly all pollution in one form or another and at some time or another, will end up in the ocean, the specific sources of pollution must be considered in arriving at conclusions. However, attempting to deal with pollution at its source usually leads to recognition that the pollution problem is only a small facet of a much larger problem, such as agricultural, health, and economic development matters. Obviously, any Law of the Sea Convention cannot hope to extend its jurisdiction inland to attack any or all types of inland polluting activity. However, it is not unduly optimistic to think that states can recognize a sufficiently high degree of convergence of interest to come to agreement imposing reasonable restraints on certain polluting activities for the common benefit of the world community.

While the draft articles and commentaries at the Conference

in Caracas indicate strong opinions on the subject of marine pollution, it would seem that adamant persistence in one approach or rejection of others overlooks the true nature of the variety of marine pollution problems which impinge on diverse geographic characteristics. A more rational and functional approach would be to categorize all known marine pollutants into classifications based upon common characteristics, for example: biodegradability of polluting materials into harmless substances and the variability of this due to geographic characteristics such as temperature, salinity, and so on; the tendency of a particular pollutant to become concentrated with greater toxicity in various shellfish or in members of higher levels in the marine food chain; the location where the greatest impact effect of the pollutant is felt, such as on toxicity in fish, on the coastline, or on the beauty of the ocean; the extent to which the benefits of continuing activities which cause pollution outweigh the costs of absorbing the pollutant into the environment; the extent to which the source of the pollutant is a point source as opposed to globally diffuse sources, and so on.

Thus it would not be inappropriate for states proximate to colder latitudes to exercise a greater degree of self-protection regarding oil pollution than states in tropical climates where oil is more readily evaporable and biodegradable.

whereas it would make little sense to impose such zonal control in an effort to protect the world community from concentrated effects of DDT. Similarly, states bordering on bodies of water having only small or slow interchange with the open sea would justifiably want to keep the decision power regarding the quality of the marine environment concentrated among the members of their region. Even within the confines of a truly international approach one should not feel constrained to avoid designation of certain areas where higher standards would be applied.

To the degree that the world community expresses a need to control certain types of marine pollution, an international body with responsibility for information on marine pollution should have authority to impose certain restrictions on the introduction of especially dangerous materials into the marine environment. And, by analogy to existing regional arrangements allocating quotas on fish catches and for determining seasonal restrictions, regional arrangements should be encouraged among states, setting pollution quotas from land-based sources in particular regions.

It is therefore proposed that an international pollution authority be established to catalog and analyze the characteristics of all known marine pollutants. Based upon known characteristics, certain pollutants would be subject to control by this

body over a maximum possible area consistent with allowing states to retain sovereignty and jurisdiction within their territorial seas. States should be encouraged to enact internal legislation prohibiting discharges of dangerous and nondegradable substances in their coastal waters. In addition to this universal control by the international authority, states would be permitted to exercise coastal zonal control over certain pollutants where particular vulnerability was demonstrated. Thus, international, regional, and national controls over marine pollution would be coordinated into a single system.

Although vessel-source pollution is not the major contributor, it is perhaps the major point of controversy in the subject of numerous drafts presented to the Conference proposing various degrees of control and enforcement powers on the flag state, port state, or coastal state. The proposal of the Federal Republic of Germany, whether or not imposition of liability is the proper mechanism for obligating the flag state to exercise control over its ships, clearly demonstrates a need for providing some positive encouragement for flag states not to fail to exercise their international responsibilities. This fact is underscored vividly in the hypothetic case of a flag ship of a landlocked state which most likely never would be exposed to the direct consequences of pollution caused by the ship.

Considering the rights and responsibilities to enforce pollution control regulations, it is reasonable to impose a primary responsibility upon the flag state with a secondary responsibility in the port state and the coastal state. Regarding enforcement powers there seems to be little reason for favoring any of the three. International standards for construction, and the like, should be administered by the flag state for the reason that it can exercise better control and is receiving benefit from the operation of the ship. State responsibility can attach to the extent that the flag state fails to perform its international obligations.

Regarding the issues of what concessions, if any, should be made to developing states which demonstrate that pollution standards are beyond their compliance capabilities, or would impose an unbearable hardship upon them, the problem of making a technological "great leap forward" from no industrialization to a pollution-free industrialization is presented. As pollution-free production is nearly always more costly than production without such a constraint, imposition of inflexibly high standards may effectively act as a barrier to further development of the lesser developed states. If the developed states wish lesser developed states to bypass the pollution phases of development, it seems only fair that the

developed states should shoulder some of the responsibility by supplying the technology necessary to accomplish the end, or economic aid specifically designed to bridge the gap to pollution-free development. Further, if we examine the proposals for a zonal approach with large areas of the marine environment under coastal state control, it is obvious that a lesser developed state cannot be expected to expend large amounts of funds and resources to patrol and enforce pollution regulations throughout a 200 mile wide coastal zone. Even the UK has questioned the cost of policing a zone 50 miles wide.

Existing law is inadequate to handle the problem of state liabilities for marine pollution which causes damage to other states. Recognizing this, states should have little difficulty coming to agreement on imposing liability on states which through marine pollution cause damage to others. Inclusion of at least a general principle to this effect in the Convention would speed up the process of development of the law, and give every state a responsibility to take some effective measures for protection of the marine environment.

Regarding the issue of the degree of generality or specificity which should be provided in the articles of the Convention, the effects of marine pollution are so dependent upon scientific factors which are often yet unknown that, even with

the best available knowledge, undue detail and specificity may result in a document too inflexible to be of value in the future. Conversely, mere generalities will be ineffectual. The dynamic nature of this situation demands an agency with sufficient scientific expertise and sufficient regulation-producing authority to translate whatever may be the latest level of marine pollution knowledge into action. Whether this authority is given to an entirely new international institution, or allocated piecemeal among existing international bodies, remains to be decided. As piecemeal approaches generally lack coordination and effectiveness, and existing institutions often have vested interests which may be difficult to overcome, a coordinated new approach is recommended.

Turning to several specific issues under consideration, it is recognized that there is a tendency on the part of many states to join issues together (such as making a pollution control zone coextensive with the economic resource zone) without considering whether the objectives being sought in each have a common basis. There seems to be little areal relationship between the need to protect a state's coastline from certain types of pollution and the desire to hold and develop the economic resources in high seas areas. The more these unrelated issues are thrown together, the less will agreement be obtainable on

any particular broad issue. In such a case there will be fewer tradeoffs available to states as they enter a negotiating posture. In order to gain consensus, states will probably accept a more generalized statement with corresponding limited effectiveness for the purpose of controlling pollution of the marine environment. Severance of the unrelated issues, however, appears to be an essential element in successfully resolving the differences among states regarding control of marine pollution.

CONCLUSION

It is possible to achieve agreement reflecting the common interests of all states on virtually all the major issues before the Geneva Session of the Third United Nations Conference on the Law of the Sea this year. Formulas such as those elaborated in this Anonymous Draft Treaty can be developed which appear adequately to protect the interests of all states on subjects of major differences: navigation, fisheries, coastal state seabed jurisdiction, marine scientific research, and control of pollution of the marine environment. Certain aspects of marine pollution control may best be deferred to a later specialized conference, however it is clearly desirable to elaborate and develop international law on this subject at this Conference. On the subject of a regime and an international authority for the international seabed area it is possible that the time available in the Geneva Session will not be adequate to permit resolution of all the outstanding issues. In such a case it seems advisable to codify at least the general features of the future international law during the Session, and to leave for negotiation, and a future protocol or separate convention, details which have not been resolved at Geneva.

One possible option which has been discussed by

representatives of some states participating in the Conference would be to convene a Third Session of the Conference in a future year, should the Geneva Session prove to be no more fruitful than the one in Caracas. The members of the Ocean Law Seminar reject this option as being totally undesirable for several reasons: (1) agreement embodying the common interest of all states is possible on all the major issues (except possibly the international seabed regime and authority); (2) resolution of these issues, particularly on the subjects of navigation, fisheries, and marine scientific research, is urgently needed to promote commerce, world food production, and understanding of the marine environment; (3) details of the international regime and authority can be left to a future specialized conference, if necessary, in view of the fact that commercial production in seabed areas beyond 200 miles from coasts is not expected to produce major revenues for a number of years; and (4) many states' representatives have expressed an unwillingness to continue to participate in the Conference should the Geneva Session turn out to be unproductive, and, if substantial diminution in the number of Conference participants should occur, the result would be that major issues on a number of subjects would be resolved with less than complete participation by states of the world community. Should the Geneva Session fail to show

substantial progress during its early weeks, isolation of the questions of the details of a seabed regime is recommended so that attention may be concentrated on the other major issues, many of which have an immediate practical importance.

In sum, with the possible exceptions noted above, it is believed that the Third United Nations Conference on the Law of the Sea can achieve at the Geneva Session its declared goal: "to adopt a convention dealing with all matters relating to the law of the sea."